

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 13, 1999

+ + + + +

The Zoning Commission met in Hearing  
Room 220 South at 441 4th Street, N.W., Washington,  
D.C., at 1:30 p.m., Angel F. Clarens, Chairperson,  
presiding.

PRESENT:

ANGEL F. CLARENS, Chairperson  
HERBERT M. FRANKLIN, Commissioner  
ANTHONY HOOD, Commissioner  
JOHN F. PARSONS, Commissioner

STAFF PRESENT:

JERRILY R. KRESS, Director, Office of Zoning  
ALBERTO BASTIDA, Secretary, Zoning Commission  
STEFANIE D. BROWN, Office of Zoning  
VINCENT ERONDU, Office of Zoning  
KENNETH KARKEET, Office of Zoning  
ANDREW ALTMAN, Director, Office of Planning  
DAVE COLBY, Office of Planning  
STEVEN COCHRAN, Office of Planning  
ALAN BERGSTEIN, Office of Corporation Counsel

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P-R-O-C-E-E-D-I-N-G-S

(1:54 p.m.)

CHAIRPERSON CLARENS: Good afternoon, ladies and gentleman. This is a regular meeting of the Zoning Commission of the District of Columbia. I'm Angel Clarens, Chair of the Zoning Commission, and I'm turning the running of the meeting to the Executive Director of the Office of the Zoning, Ms. Jerrily Kress.

MS. KRESS: Today, we do not have -- we have preliminary matters, but I would suggest that we discuss the preliminary matters as we deal with each item. Then it will be more clear, and I believe we can expedite things a little better that way.

So, if you want to begin with the minutes of the meeting, I would start and first comment that we did vote on the regular public meeting agenda of April 12. So, that is stricken from our agenda for today.

So, the next action is for the regular public meeting of May 10, which there are some comments. Mr. Chairman, if you would prefer for me to make them or whether you would rather make them.

CHAIRPERSON CLARENS: Well, why you don't start making the comments, and then I will ask the commissioners, do they have additional comments. So, why don't you start and go through the revisions to those minutes, and then we'll pick up from the other commissioners to see if they have any

1 additional comments.

2 MS. KRESS: All right. Thank you.

3 First, we'll discuss the meeting of May 10, and  
4 my comments will not be relating to typographical errors.  
5 There are several, and they will all be picked up in the final  
6 submission of the minutes.

7 The first proposal -- actually, it's come to my  
8 attention from Commissioner Parsons, it is probably on page 3,  
9 and perhaps Commissioner Parsons would like to go ahead and  
10 make the changes to the minutes on page 3 before I continue on  
11 page 4.

12 COMMISSIONER PARSONS: You may recall that at  
13 this meeting I had to leave early, and many of the actions  
14 apparently -- most of the actions, then, subsequent to that  
15 you will see that I approved by proxy. That was picked up  
16 here. I did not hear this case, so I should be recorded here  
17 --

18 CHAIRPERSON CLARENS: We're talking about case  
19 number 98-11 --

20 COMMISSIONER PARSONS: Correct.

21 CHAIRPERSON CLARENS: -- the Map Amendment of  
22 the 8th Street Overlay.

23 COMMISSIONER PARSONS: So, I should be  
24 recorded, then, as Mr. Franklin, as not voting having  
25 participated.

26 CHAIRPERSON CLARENS: So, Mr. Franklin, Mr.

1 Parsons not voting not having participated.

2 COMMISSIONER PARSONS: Correct.

3 CHAIRPERSON CLARENS: Okay.

4 MS. KRESS: The next comment is on page 4,  
5 regarding case number 98-8, the Child Development Center  
6 Regulations. I would like to propose the addition of a point  
7 number 3 that the record was held open to allow for the Office  
8 of Planning to contact those agencies or organizations that  
9 had expressed concerns about the case. Because a vote was  
10 made, but we did hold the record open to allow OP to contact  
11 the agencies and organizations that had --

12 CHAIRPERSON CLARENS: And we have received  
13 those comments as of this meeting.

14 MS. KRESS: As a part of the package that was  
15 sent.

16 CHAIRPERSON CLARENS: As part of the package,  
17 yes.

18 MS. KRESS: On page number 5, item C, case  
19 number 98-1M/97-9C, that was included here erroneously. That  
20 was voted on in April and closed in April. It was mentioned  
21 on the agenda, but it was not discussed and should not have  
22 been on the agenda, because it was resolved at the April  
23 meeting. So, item C should disappear from page number 5.

24 CHAIRPERSON CLARENS: Okay.

25 MS. KRESS: Item E, did you -- were you able to  
26 check the transcript, Mr. Bastida?

1 MR. BASTIDA: No, Madam Chairperson, I was not  
2 able -- I mean, Madam Director, no, I was not able to.

3 MS. KRESS: We need to double check. This was  
4 not to my recollection or to Mr. Bastida's recollection, and I  
5 will rely on the rest of the Commission what transpired, and  
6 it was clear, and so that we want to check in the transcript  
7 prior to finalizing item E.

8 And, with that, that contains my comments.

9 Commissioner Parsons, did you have any more?  
10 No?

11 CHAIRPERSON CLARENS: Do any of the  
12 commissioners remember the discussion on the 500 5th Street,  
13 N.W. issue?

14 MS. KRESS: It says it was deferred, and it was  
15 not deferred, so I'm not sure exactly what did transpire.  
16 Perhaps we can look at that through this hearing and vote on  
17 these minutes once we have that clarification towards the end  
18 of the meeting.

19 CHAIRPERSON CLARENS: Yes. Let's defer action,  
20 then, on the minutes of May 10 until we clarify what is that  
21 issue all about, item E.

22 MS. KRESS: Thank you.

23 COMMISSIONER HOOD: Mr. Chair, my question is  
24 maybe we'd better hold this until our next monthly meeting,  
25 because there are a number of corrections, and we want to make  
26 sure we're accurate, and I don't know if we will have



1 sufficient enough time to be able to take care of this in this  
2 session.

3 CHAIRPERSON CLARENS: Yes, that's fine. We can  
4 defer it until next month's meeting.

5 MS. KRESS: All right. Moving on to the May 20  
6 -- I mean, the -- that was, excuse me, the May 10 -- the May  
7 20 session. I only have on page 2 under hearing action, case  
8 99-321, item 4. It's a small word but has some significant  
9 meaning where it talks about the Woodward & Lothrop building  
10 store, "to allow office use within the vacant Woodward &  
11 Lothrop Department Store building in square 346 or in  
12 combination with," the "or" is very inappropriate. I don't  
13 believe that was ever any thought.

14 It should read, "The department store building  
15 in square 346 in combination with," and the word "or" should  
16 be eliminated. That was the only comment I had on those  
17 minutes.

18 CHAIRPERSON CLARENS: That is correct. That is  
19 absolutely correct.

20 Okay, these minutes are before us for approval  
21 and adoption.

22 COMMISSIONER FRANKLIN: I move their approval,  
23 as revised, Mr. Chairman.

24 COMMISSIONER HOOD: I second the motion.

25 CHAIRPERSON CLARENS: Been properly moved and  
26 seconded.

1 All in favor signify by saying aye.  
2 (Chorus of ayes.)  
3 Opposed?  
4 (No response.)  
5 The ayes have it; it's so adopted.  
6 MS. KRESS: The next minutes on Thursday, June  
7 3. Basically, it is just a matter of time that it should read  
8 8:30 p.m. instead of 7:30, but there is nothing else of  
9 substance that I have noted in the June 3 meeting minutes.  
10 CHAIRPERSON CLARENS: These minutes are before  
11 us for approval. Do I hear motion to approve?  
12 COMMISSIONER HOOD: Mr. Chair, I move for  
13 approval with the necessary corrections.  
14 COMMISSIONER FRANKLIN: Second.  
15 CHAIRPERSON CLARENS: All in favor?  
16 (Chorus of ayes.)  
17 All opposed?  
18 (No response.)  
19 The ayes have it.  
20 Next set of minutes?  
21 MS. KRESS: I'm sorry, the next meeting minutes  
22 are June 14, and starting on page 2, a proposed action, item  
23 C, case number 98-8, the update of the Child Development  
24 Center regulations. That proposed action was taken on 5-10-  
25 99, as I have just pointed out a few minutes ago, and,  
26 basically, what the paragraph should read is, is that "The

1 Chairperson ruled to postpone further discussion until July  
2 12, 1999 monthly meeting and to continue to allow the Office  
3 of Planning to contact those agencies or organizations that  
4 had expressed concerns."

5 CHAIRPERSON CLARENS: I'm sorry, where are you  
6 now?

7 MS. KRESS: I'm on page 2, the June 14, under  
8 proposed action, case number 98-8, update of Child Development  
9 Center regulations. And, basically, I proposed to add that  
10 the words "proposed action was taken on 5-10-99," and then  
11 that "the Chairperson ruled to postpone further discussion  
12 until July 12, '99 at monthly meeting and to continue to allow  
13 the Office of Planning to contact those agencies or  
14 organizations that had expressed concerns about the proposal  
15 but had not submitted comments."

16 Next is on page 3 --

17 CHAIRPERSON CLARENS: I'm sorry, are we all  
18 clear on that, and Mr. Parsons?

19 COMMISSIONER PARSONS: Yes.

20 MS. KRESS: Where's the handout on page 3 or  
21 should I just read it?

22 On page 3 -- all right, let me just read it  
23 into the record; that will probably be easier. On page 3,  
24 reaffirmation of proposed action, we believe it should be  
25 rewritten to read as follows: Case number 98-14, PUD and Map  
26 Amendment from SP2 to C4, proportion of lot 842 and square

1 184, at 1016th Street, N.W., the Solar Building.

2 Number one: After the Commission reviewed all  
3 information on the record, the Commission determined that the  
4 previous action was correct and valid. Second: The Office of  
5 Corporation Counsel and the commissioners discussed the case  
6 and concluded that a reaffirmation was not needed.

7 CHAIRPERSON CLARENS: That is correct. That's  
8 my recollection of what went on in that meeting.

9 MS. KRESS: Item --

10 CHAIRPERSON CLARENS: Is that correct? Mr.  
11 Hood, is that your recollection?

12 COMMISSIONER HOOD: Yes.

13 CHAIRPERSON CLARENS: Okay.

14 MS. KRESS: Item number 6 put two things  
15 together that were not exactly synonymous, and I propose it be  
16 rewritten to say: Case number 99-3Z, the DD Housing Text  
17 amendments, the 1998 Comp Plan amendments consistency case.

18 The Chairperson indicated that the notice of  
19 proposed rulemaking would be sent to the National Capital  
20 Planning Commission. The public hearing notice has been  
21 prepared for ZC case number 99-3Z1, and the hearing date has  
22 been set for September 9, 1999.

23 CHAIRPERSON CLARENS: That is correct.

24 COMMISSIONER FRANKLIN: Change the spelling of  
25 capital to "al."

26 CHAIRPERSON CLARENS: Yes.

1 MS. KRESS: I'm sorry, yes. But I am  
2 mentioning typos, but thank you.

3 CHAIRPERSON CLARENS: Yes, we also have  
4 "recluse" and "principles" and things like that.

5 MS. KRESS: Again, not picking up typos, that  
6 is the rest of the comments I have on the June 14 minutes.

7 CHAIRPERSON CLARENS: Yes, and I asked and it  
8 was clarified for me that the draft order on item B, case  
9 number 97-61, the Chain Bridge Road University Terrace Overlay  
10 Boundary Extension, that the draft order number 863-A was an  
11 order to deny the application for extension, or the proposal  
12 for extension. Because we don't need to clarify it in the  
13 minutes, but I just wanted to make sure that that was in fact  
14 what we had done.

15 COMMISSIONER PARSONS: I think you should  
16 clarify that in the minutes, don't you?

17 CHAIRPERSON CLARENS: Well --

18 COMMISSIONER PARSONS: It essentially reads as  
19 though we approved the boundary extension.

20 CHAIRPERSON CLARENS: That's what it reads --  
21 that's how it read as I read it. It doesn't say that the 863-  
22 A is an order to deny it.

23 MS. KRESS: Well, I think that if there's any  
24 confusion, that could be helpful to add those words.

25 COMMISSIONER PARSONS: Just right after the  
26 word --

1 MR. BASTIDA: Yes, I think that the words  
2 "motion denied" should be added to it to clarify it.  
3 COMMISSIONER PARSONS: Just add the word "to  
4 deny" after the word "motion."  
5 CHAIRPERSON CLARENS: Add "a motion to deny"  
6 made by Commissioner Parsons?  
7 COMMISSIONER PARSONS: Right.  
8 MS. KRESS: I think that will take away any  
9 possible questions.  
10 CHAIRPERSON CLARENS: Okay.  
11 COMMISSIONER PARSONS: I move we approve these  
12 minutes, as edited.  
13 COMMISSIONER HOOD: Second.  
14 CHAIRPERSON CLARENS: Been properly moved and  
15 seconded.  
16 All in favor signify by saying aye.  
17 (Chorus of ayes.)  
18 Opposed?  
19 (No response.)  
20 The ayes have it.  
21 MR. BASTIDA: For the record, I would like to  
22 state that all the minutes, as approved, have been in a vote  
23 five to zero -- four to zero.  
24 CHAIRPERSON CLARENS: Four to zero, that is  
25 correct.  
26 MR. BASTIDA: All right, thank you.

1 CHAIRPERSON CLARENS: Okay, the next set of  
2 minutes of July 12.

3 MS. KRESS: The minutes of July 12, the first  
4 page, item 4 where it talks about the meeting minutes, that  
5 sentence should begin, "The meeting minutes from May 10 and  
6 the special meeting minutes from May 20 and June 3 were not  
7 acted upon." The May 10 ones were also not acted on, and that  
8 was a regular meeting versus the special meetings. So, to  
9 clarify, all three were not acted on at that point.

10 CHAIRPERSON CLARENS: Okay.

11 MS. KRESS: The rest of the comments, I would  
12 classify in typos meaning some with's, and's, and of's, and  
13 things like that also was left out, but that's all the  
14 comments I have on the July 12.

15 CHAIRPERSON CLARENS: Any further comments from  
16 commissioners?

17 Hearing none, there is a motion to adopt?

18 COMMISSIONER FRANKLIN: So moved.

19 COMMISSIONER HOOD: Second.

20 CHAIRPERSON CLARENS: Been properly moved and  
21 seconded.

22 All in favor signify by saying aye.

23 (Chorus of ayes.)

24 Opposed?

25 (No response.)

26 The ayes have it; adopted.

1 MR. BASTIDA: The staff would record the votes  
2 four to zero. Mr. Franklin moving, Mr. Clarens second it?  
3 CHAIRPERSON CLARENS: No, Mr. Hood second it.  
4 MR. BASTIDA: Mr. Hood second it, and it was a  
5 vote four to zero. Thank you.  
6 CHAIRPERSON CLARENS: Very good, okay.  
7 So, we move on, then, to item 3 of the agenda:  
8 Proposed Action.  
9 MR. BASTIDA: Mr. Chairman, the applicant for  
10 Walter Washington Estates requested that the Commission does  
11 not take this item until October. The drawings that they were  
12 supposed to have prepared and be ready to present were not,  
13 and, accordingly, he asked for further postponement on the  
14 decision.  
15 CHAIRPERSON CLARENS: Okay, what is the  
16 pleasure of the commissioners?  
17 COMMISSIONER HOOD: What are you asking for,  
18 Mr. Chairman?  
19 CHAIRPERSON CLARENS: Well, it's a postponement  
20 of the decision on this case. We asked for additional  
21 information. I think it had to do with a number of issues --  
22 the back porches and --  
23 MS. KRESS: It's actually recorded in one of  
24 the minutes we've just approved. I believe it was either the  
25 12th or the May 10.  
26 CHAIRPERSON CLARENS: So, we've asked for a



1       number of things, and they're not ready yet to submit, and  
2       they're asking for a postponement.

3               COMMISSIONER HOOD: With that, Mr. Chairman, I  
4       make a motion that we postpone case number 98-20M --

5               CHAIRPERSON CLARENS: Until the October  
6       meeting.

7               COMMISSIONER HOOD: -- until the October  
8       meeting.

9               CHAIRPERSON CLARENS: Very good. Okay, second?

10              COMMISSIONER FRANKLIN: Second.

11              CHAIRPERSON CLARENS: Any objection?

12              All in favor signify by saying aye.

13              (Chorus of ayes.)

14              The case, then, is postponed for a decision in  
15       October.

16              Okay, then, the next --

17              MR. BASTIDA: Madam Chair, the vote has been  
18       recorded --

19              CHAIRPERSON CLARENS: No, it's no Madam Chair;  
20       it's Mr. Chair.

21              MS. KRESS: Mr. Chairman.

22              MR. BASTIDA: Mr. Chairman --

23              CHAIRPERSON CLARENS: This is the second time,  
24       Mr. Bastida. The third time, you're out.

25              (Laughter.)

26              MR. BASTIDA: I am basically out, so -- with

1       this surgery. Who moved it? Hood moved it, Franklin second  
2       it, and it was four to zero, the vote to postpone.

3                   Before you go to Florida Rock, the Office of  
4       Planning has just submitted a report with some comments  
5       regarding the Commission's inquiries and are asking the  
6       Commission to waive their rules of filing to be able to  
7       provide this to the commissioners.

8                   MS. KRESS: That's in addition to the --

9                   MR. BASTIDA: It was just handed to me.

10                  MS. KRESS: All right. So, there are actually  
11       two preliminary matters: One to waive the OP regulations to  
12       allow the report that was forwarded end of last week and then  
13       --

14                  CHAIRPERSON CLARENS: And that is the September  
15       8 report.

16                  MR. BASTIDA: Correct.

17                  CHAIRPERSON CLARENS: Is that correct?

18                  MS. KRESS: And then there's another one.

19                  MR. BASTIDA: Dated September 13, which is  
20       what's just handed to me.

21                  MS. KRESS: Which you have not seen yet.  
22       They're asking to also waive a second report.

23                  CHAIRPERSON CLARENS: Okay, any objections to  
24       waiving the rules on the admission of these comments from OP  
25       in reference to the Florida Rock case, 98-17F?

26                  I hear none. I will waive the rules to accept

1 the late submission of the Office of Planning report, which  
2 came to us on September 8 and this one, additional ones, that  
3 are coming to us today.

4 Okay. And then we'll turn it over to the  
5 Office of Planning to guide us through the decisionmaking  
6 process.

7 Mr. Colby?

8 MR. COLBY: Thank you. You have our report of  
9 the 8th, and I would summarize that by -- you had asked us to  
10 comment on the submission -- the final submission by the  
11 applicant in response to specific Commission inquiries of the  
12 applicant. The applicant did so, and our comments are  
13 basically that we feel that the applicant has in fact  
14 commented in a way which meaningfully responds to the  
15 Commission's requests.

16 And our only really substantive -- I wouldn't  
17 say disagreement -- I would only say our substantive response  
18 to that is our comment number 10, and I would go right to the  
19 revised page to see that with the boxes around correcting some  
20 information.

21 We point out that our understanding of the  
22 process for development is -- and I'm not sure how much of  
23 this you want us to go through -- is basically summarizing  
24 what the applicant's process is, and it's fairly complex. If  
25 you'd like, I'll happy to run through this page 3.

26 CHAIRPERSON CLARENS: Well, no. I think that

1 -- on page 3 of what? Of the one that you submitted just now?

2 MR. COLBY: The latest one --

3 CHAIRPERSON CLARENS: The latest one.

4 MR. COLBY: -- which has very minor changes,  
5 but they should be in the record.

6 CHAIRPERSON CLARENS: Well, we have reviewed  
7 the one from September 8.

8 MR. COLBY: All right.

9 CHAIRPERSON CLARENS: And that was very helpful  
10 in understanding what it is, and there is a couple of issues  
11 that I think the Commission wants to pick up on that. But I  
12 think that if you can clarify what it is that you are changing  
13 and your rationale for those changes?

14 MR. COLBY: Yes, I'll be happy to do that.

15 About a third of the way down the page, on page  
16 3, the timing of residential development according to the  
17 model standard, when the model residential kicks in, as in  
18 response to the model, FR, Florida Rock, previously has enough  
19 space to obtain financing, and construction begins.

20 At that point, the clock starts ticking, and  
21 ten years elapse, not five. And, thereafter, if and when the  
22 housing market model criteria have been met, residential  
23 construction is required to begin any time after ten years.

24 The five years is in fact the shortest time  
25 possible to take the site from Florida Rock. The Potomac  
26 Investment can elect to do that after five years

1       notwithstanding what the housing model may say.

2                   That's a minor clarification important to the  
3       participants, but I think minor in terms of -- I believe in  
4       terms of the decision and wouldn't affect our recommendation.

5                   The last change, at the bottom page, is perhaps  
6       more significant. And that is that if the -- if ECC builds  
7       the park but Potomac Investment does not construct the  
8       required residential, what happens then? The \$500,000  
9       investment is lost. Potomac Investment continues to sustain  
10      carrying costs, and the District has the authority to enforce  
11      performance against Potomac Investment, as the owner of Parcel  
12      three.

13                  That is a change from the language which we had  
14      understood to be the situation in our prior report.

15                  So, ultimately, Potomac Investment, again, is  
16      going to lose the \$500, which is in essence what we had said  
17      before, continues to sustain carrying costs, and the District  
18      may enforce performance, has the authority to do so. That's a  
19      worst case from the District's perspective scenario.

20                  CHAIRPERSON CLARENS: You've lost me there.  
21      I'm not clear on that last issue.

22                  MR. COLBY: Okay.

23                  CHAIRPERSON CLARENS: Well --

24                  MR. COLBY: We had said previously that ECC  
25      could sell the property, and it reverted to ECC, and that  
26      apparently was incorrect. So, we have stated what is more

1 factual.

2 CHAIRPERSON CLARENS: That ECC could sell the  
3 property.

4 MR. COLBY: That ECC cannot sell the property.  
5 That Potomac Investment must in fact -- it does not revert to  
6 ECC. Potomac Investment must make good on its commitment to  
7 build housing, and should it not do so, it loses the \$500 it's  
8 invested, and it continues to pay annual carrying costs, and  
9 the District has the right to enforce performance of the  
10 residential.

11 COMMISSIONER HOOD: Mr. Colby, for  
12 clarification, you're saying 500, but I'm reading 500,000.

13 MR. COLBY: Five hundred thousand, I'm sorry.  
14 There's a big difference.

15 CHAIRPERSON CLARENS: I see. So, let me see if  
16 I understand correctly. Your first analysis, the one in which  
17 it says that if ECC builds the park but Potomac Investment  
18 does not construct the required residential, then ECC can --  
19 the ownership reverts back to ECC, and ECC can then sell the  
20 property. You're saying that that's not what the applicant is  
21 in fact proposing.

22 MR. COLBY: That's correct; that that's  
23 inaccurate.

24 CHAIRPERSON CLARENS: That's inaccurate.

25 MR. COLBY: That was an inaccurate  
26 understanding on my part.

1                   CHAIRPERSON CLARENS: Okay. And what they are  
2     proposing is in fact that PIP, or Potomac Investments, will be  
3     -- are committed to this residential development to happen at  
4     some point.

5                   MR. COLBY: That --

6                   CHAIRPERSON CLARENS: And that are stuck with  
7     this property.

8                   MR. COLBY: Yes, if they don't perform, and the  
9     only requirement for them to perform are the two triggers --  
10    either the housing model would require that --

11                  CHAIRPERSON CLARENS: Correct.

12                  MR. COLBY: -- or sufficient leasing on the  
13    part of --

14                  CHAIRPERSON CLARENS: And 15 years. Sufficient  
15    leasing and 15 years. Is that correct?

16                  MR. COLBY: I'm sorry, what was --

17                  CHAIRPERSON CLARENS: Sufficient leasing --

18                  MR. COLBY: Yes, on the part of the Florida  
19    Rock.

20                  CHAIRPERSON CLARENS: -- of the PUD and 15  
21    years have lapsed.

22                  MR. COLBY: Yes, and the time lapse, that's  
23    correct.

24                  CHAIRPERSON CLARENS: Okay. And there's  
25    another -- what is the rest of the --

26                  MS. KRESS: The 15 years is the cap that I

1 believe the Commission asked for at the last meeting.

2 CHAIRPERSON CLARENS: Correct.

3 MR. COLBY: The rest of the submission, of this  
4 late submission, just in case you wanted to insert those three  
5 pages in place of the original three pages, there's nothing  
6 new on the following pages.

7 CHAIRPERSON CLARENS: Very good.

8 COMMISSIONER FRANKLIN: What three pages?

9 MR. COLBY: I'm sorry. The three pages that  
10 were given to you today to replace the three pages -- the last  
11 two pages of the report.

12 COMMISSIONER FRANKLIN: But we received a  
13 proposed Commission order within a day or two. That may or  
14 may not be the same as what was in our packet. Do you know  
15 what changes are embodied in that order?

16 CHAIRPERSON CLARENS: No, we do not.

17 MS. KRESS: That's the one that was received  
18 late Friday, and we have staff -- I, along with the Commission  
19 members, reviewed this weekend the previous, and we've asked  
20 staff to review for us the changes between what we reviewed  
21 and --

22 COMMISSIONER HOOD: Mr. Chair, can we also ask  
23 -- if it's appropriate -- also ask the applicant to point out  
24 just where some of those changes were, if it's appropriate?

25 MS. KRESS: We might just take a few more  
26 minutes. The OP report, which I had noted already under



1 number 53, insert description of Office of Planning report,  
2 that has been incorporated with the addition of basically two  
3 sentences that say the Office of Planning filed its report on  
4 the responses in the supplemental filing, dated September 8.  
5 Now, we'll have to add probably this one, as well.

6 But that's all that speaks to is the addition.  
7 That's all so far. There's just a couple of pages. So, maybe  
8 if we can have general discussion, we may be able to come  
9 back, because we will have reviewed, and we will be able to  
10 point out to you the changes.

11 CHAIRPERSON CLARENS: Okay, so, let's then --

12 MS. KRESS: She's almost finished.

13 CHAIRPERSON CLARENS: Okay. So, while that's  
14 going on, can we proceed, then, to discuss the proposed order  
15 on the basis of the one that was given to us in our package,  
16 Mr. Franklin and Mr. Hood and Mr. Parsons?

17 We have a proposed order, and we have comments  
18 from OP, and I think that there are some issues, and I can  
19 start by raising the issue that is of concern to me, and then  
20 we can move from there. And we can hear opinions from the  
21 Office of Planning, and them, perhaps, have our own sense.

22 And my only issue is, again, with this whole  
23 relationship between the PUD and the amenity site and  
24 clarifications of some of the issues concerning that, and the  
25 proposal of tying the construction of the housing to  
26 certificate of occupancies issued to prospective tenants for

1 90 percent of the net rentable areas. And it seems to me that  
2 that is an excessive number; that 90 percent occupancy of a  
3 building of this size might be, perhaps, not obtained for a  
4 long, long time. And it seems to me that perhaps we need to  
5 consider a lesser number.

6 COMMISSIONER FRANKLIN: Well, I agree with the  
7 Chair that it is a very high bar to jump over, and I, for one,  
8 would entertain --

9 CHAIRPERSON CLARENS: It's on page 33 of the  
10 proposed order.

11 COMMISSIONER FRANKLIN: So, there's double bar  
12 here -- 15 years after that rather high level of net rentable  
13 has been achieved. And I, for one, Mr. Chairman, would  
14 certainly want that rather lengthy period of time to begin  
15 after a lower level of net rentable has been achieved.

16 CHAIRPERSON CLARENS: Okay. And do you propose  
17 what that percentage should be?

18 COMMISSIONER FRANKLIN: I don't have a specific  
19 proposal, but I think 90 is quite high. I would entertain  
20 something in the neighborhood of 75 or 80.

21 CHAIRPERSON CLARENS: I think Office of  
22 Planning, at some point, I think recommended 77, 80? Eighty.

23 Mr. Parsons, any thoughts?

24 So, you're in agreement that it should be  
25 lowered, that the percentage should be lowered?

26 Mr. Hood?

1                   COMMISSIONER HOOD: Mr. Chairman, I need some  
2 clarification. I'm trying to understand exactly what are we  
3 -- 90 percent of what?

4                   CHAIRPERSON CLARENS: Of certificate of  
5 occupancies; meaning that they have people occupying this  
6 building -- 90 percent of the building is occupied.  
7 Certificate of occupancies have been issued for tenants  
8 occupying 90 percent of this building, and that includes all  
9 the space and the buildings -- retail, et cetera, et cetera.

10                  COMMISSIONER HOOD: Okay, before they can get a  
11 CFO \*.

12                  CHAIRPERSON CLARENS: No, no, no. Before it  
13 triggers the sequence of events, which is very complex, which  
14 is going to eventually end with the package, as we understand,  
15 ultimately we want, which is the park, the residential  
16 components, and the other amenities -- the ECC, et cetera, et  
17 cetera. So, before all that gets triggered, they're saying 90  
18 percent of the building needs to be occupied with certificate  
19 of occupancies, and we're saying that that is a very high  
20 threshold; that a 90 percent building of that magnitude, a 90-  
21 percent occupied building, it might not happen.

22                  MR. COLBY: Mr. Chairman, if I may, you  
23 referenced or somebody referenced our report and the fact that  
24 we have recommended 80 percent, but let me tell you where that  
25 number came from, and it will help you to figure out what the  
26 perfect number is.

1                   The issue is not when we would like to have  
2     housing there, because we'd like it a lot sooner than this  
3     will provide it, but, rather, when will the -- when can the  
4     party who -- Potomac Investment, who is committing to put that  
5     residential there, when can they be certain that there will be  
6     a sufficient housing market to enable them to get the  
7     financing and not to have just lost their shirt on this  
8     promise?

9                   They believe that there has to be, and they  
10    have so stated to us anyway, that there has to be at least \$1  
11    million worth of -- a million square feet of leasing in order  
12    to get enough people in the area to begin to turn the area  
13    around.

14                  It's true, and they would agree to that, that  
15    we all hope there will be additional development in the area,  
16    and we're not all going to be relying on this Florida Rock  
17    project to turn the area around. But we can't know that.  
18    This project we can know, and Potomac Investment can only rely  
19    on this set of events.

20                  So, they have agreed that the figure of 1.3  
21    million or whatever it might have been at 90 percent exceeds  
22    their minimum but that their minimum is, in a general sense,  
23    the leasing of a million square feet. And if we could all  
24    move into the future and know that other development had  
25    occurred, they probably -- that million square feet could be  
26    lowered. But not knowing that now, they feel like that's a

1 risk they can't take.

2 CHAIRPERSON CLARENS: But a million is only 77  
3 and not 90 percent.

4 MR. COLBY: That is correct.

5 COMMISSIONER FRANKLIN: Well, why don't we  
6 substitute a million then?

7 CHAIRPERSON CLARENS: Well, or a percentage.  
8 We can do it as a percentage.

9 COMMISSIONER FRANKLIN: By the way, in the  
10 order, the word "occur" is used where it talks about, Mr.  
11 Chairman, "The development of parcel three for residential  
12 uses shall occur no later than the time that the model kicks  
13 in or --." What does the word mean, "occur?" Does that mean  
14 residential development shall have been completed or have been  
15 commenced?

16 MR. COLBY: According to my discussions with  
17 the applicant, it means shall have commenced.

18 CHAIRPERSON CLARENS: Well, then, that's what  
19 it should say.

20 Is staff recording that?

21 MS. BROWN: Yes.

22 MS. KRESS: By the way, staff would just add  
23 they have finished reviewing, and it appears that the only  
24 change between the versions, as Commissioner Parsons has  
25 pointed out to me, there is a small number on the last page  
26 between versions 20 and 21 is the paragraph 53, which I had

1 picked up earlier.

2 There appears to be no other changes. We will  
3 verify that. But for purposes of your decisionmaking, there  
4 appears to be no other changes between those -- 20 and 21.

5 CHAIRPERSON CLARENS: I would guess it would be  
6 also appropriate, and I don't think that it would be contrary  
7 to anything if staff actually consults with the applicant who  
8 is here in this meeting room to find out if there is anything  
9 else that they have changed between the two orders that they  
10 have submitted.

11 MS. KRESS: All right, thank you.

12 CHAIRPERSON CLARENS: Okay, is there any other  
13 issue? I mean, given the complexity of the amenities package,  
14 the design of the building, the extent of the PUD, all of the  
15 issues that are in the order, is there any other issue that  
16 any of the commissioners want to discuss in reference to this  
17 case?

18 Are we ready to move on this case or are we  
19 going to wait until staff has clarified what is happening  
20 between the two proposed orders?

21 COMMISSIONER HOOD: Mr. Chair, let me just make  
22 sure that we have established a percentage. Did we do that?

23 CHAIRPERSON CLARENS: Well, we can do that at  
24 the time we make a move.

25 COMMISSIONER HOOD: I mean, in all fairness, I  
26 do believe it's going to take some revitalizing of that area,

1 and I don't know if -- I can't predict the future, and I don't  
2 know if 70 percent is better or 90 percent. But in all  
3 fairness, I'm ready to go a happy medium, 85 percent. I'm  
4 just throwing that out for discussion.

5 CHAIRPERSON CLARENS: Well, 80 percent is the  
6 number that has been recommended by the Office of Planning,  
7 and they have based -- they have a -- they've developed a  
8 rationale for reaching that point, and that is based on  
9 Potomac Investment's argument that they require that amount of  
10 square footage of useable or used space in order to help to  
11 begin to change the market. There is a tie.

12 So, the 80 percent is not an arbitrary number.  
13 It's a number that has been developed. So, I would like to  
14 stick with the Office of Planning's recommendation.

15 COMMISSIONER HOOD: But I also will put that in  
16 context with the 90 percent that was in the order. So, I  
17 mean, that came from the applicant. So, I was just trying to  
18 make it feasible for what the Office of Planning is saying as  
19 well as what the applicant feels that can be done.

20 CHAIRPERSON CLARENS: Mr. Parsons? Mr.  
21 Franklin?

22 COMMISSIONER FRANKLIN: We're looking into a  
23 very clouded crystal ball, and I don't know that any number is  
24 better than any other number.

25 CHAIRPERSON CLARENS: Yes, and my only feeling  
26 is that, again, a building of this size to occupy it and to

1 rent it and to have everybody -- 85 percent occupancy is a  
2 fairly high level of occupancy in a building of this size, and  
3 80 is not out of the question in order to trigger what we're  
4 talking about happening here. So, it's not an unreasonable  
5 number.

6 And it hopefully moves things a little bit  
7 quicker, although, God knows what's going to happen.

8 Mr. Parsons, any comment on the 80, 85 or 90?

9 COMMISSIONER PARSONS: I think the staff's  
10 recommended 80 based on the million square feet, and that's  
11 what we should do.

12 CHAIRPERSON CLARENS: Well, it's not staff;  
13 it's Office of Planning.

14 COMMISSIONER PARSONS: All right, Office of  
15 Planning.

16 CHAIRPERSON CLARENS: Well, okay. So have we  
17 determined whether the two orders, the only issue has to do  
18 with the reference to the Office of Planning report?

19 MS. KRESS: There are two. The first one is  
20 the reference to the Office of Planning report, which I can  
21 read you into the record, and, basically, number 53, very  
22 quickly, would read, "The Office of Planning filed its report  
23 on the responses and the supplemental filing, dated September  
24 8, 1999 and September 13, 1999, and determined that the  
25 responses and the supplemental filing were responsive to the  
26 requests of the Zoning Commission and that the proposals made



1 by the applicant further enhanced and improved the application  
2 and the PUD project."

3 I don't believe we need to speak here to the 90  
4 percent. I believe it can be handled on page 33.

5 The second item, though, that did change and  
6 was handed out to you, it's on page 31. It's highlighted in  
7 yellow at the top. I believe it was just handed to you. And  
8 it should say, "the PUD site" where the original order said  
9 "the amenities site," and that was incorrect. So, the top of  
10 page 31 should say, "The PUD site."

11 CHAIRPERSON CLARENS: Okay.

12 MS. KRESS: And John was ahead of us and had  
13 picked it up already.

14 COMMISSIONER FRANKLIN: Well, Mr. Chairman, in  
15 order to move us along, I'd be happy to move --

16 MS. KRESS: I'm sorry, John has made the point,  
17 this handout is a proposed change. It is not in version 21.  
18 That's the point Commissioner Parsons was making. So, this is  
19 a new change in light of the whole order.

20 CHAIRPERSON CLARENS: Okay, Mr. Franklin, you  
21 were trying to move us along?

22 COMMISSIONER FRANKLIN: Yes, I'd move the  
23 adoption of the proposed order before us, as revised by the  
24 latest submission.

25 CHAIRPERSON CLARENS: Submissions.

26 COMMISSIONER FRANKLIN: Submissions. And with

1 the exception that there would be a change on page 33, and  
2 where "90 percent" appears, the words "85 percent" would  
3 appear.

4 And in support of that, I'd say that we're  
5 really talking about the beginning of a 15-year clock, and it  
6 seems to me that 15 years -- once you've reached 85 percent,  
7 15 years is a pretty long time to get the area matured, and so  
8 I'm comfortable with 85.

9 So, in order to just move us along, I make that  
10 motion, Mr. Chairman.

11 COMMISSIONER HOOD: I'll second that motion,  
12 Mr. Chairman, to move us along.

13 CHAIRPERSON CLARENS: Okay, discussion on the  
14 motion? We have a motion for approval. Any further  
15 discussion on this order?

16 Hearing none, all in favor of the motion  
17 signify by saying aye.

18 COMMISSIONER HOOD: Aye.

19 COMMISSIONER FRANKLIN: Aye.

20 Opposed?

21 COMMISSIONER PARSONS: No.

22 CHAIRPERSON CLARENS: The motion carries by a  
23 vote of three to one.

24 MR. BASTIDA: Madam -- Mr. Chairman?

25 (Laughter.)

26 COMMISSIONER PARSONS: He's gone, he's gone.

1 It's over.

2 CHAIRPERSON CLARENS: That's it. Go home.

3 MR. BASTIDA: The staff will carry the vote  
4 three to one. Mr. Franklin moving and Mr. Hood seconding.  
5 Mr. Franklin, Hood, and Clarens voted for it. Mr. Parsons,  
6 opposed to it.

7 CHAIRPERSON CLARENS: Let me also make a  
8 comment in reference to this case, and I will decide at that  
9 if it is important, because Mr. Altman is here or was here, is  
10 here, that the comment that I made last Thursday at our  
11 meeting with the Council, that it is in projects such as this  
12 as well as in all PUDs, it's very important that we get an  
13 overall view of the area.

14 And I made that comment, and you can see in  
15 this particular case where an area plan that would have  
16 described not only what is immediately or what the applicant  
17 is doing or even your analysis of the application but  
18 something before the Commission that gives us an idea of  
19 everything that is happening, that is being even talked about,  
20 that has been proposed, so that we get a better picture of the  
21 entire area as well as proposed actions.

22 One of the things that we didn't talk about,  
23 but I think has been taken care of, was the ANC's request that  
24 we postpone action on this application until we have acted on  
25 a land use map in making the regulations in compliance with  
26 the comprehensive plan for this area.

1                   And this is something that when we get to your  
2           part of the agenda, I'm going to be requesting that the Office  
3           of Planning moves expeditiously. Now that we have seen all  
4           kinds of plans for Bussard Point \*, I'd like to move  
5           expeditiously to come up with a proposal for a land use map  
6           and text amendments to deal with this area of the city,  
7           because that's what's going to make this -- all this 15 years  
8           and the 80 percent and all this -- 85 percent that we've just  
9           approved really take place if in fact we're going to move for  
10          a revitalized Bussard Point \*.

11                   Okay.

12                   COMMISSIONER FRANKLIN: Mr. Chairman, may I add  
13          a few words to welcome Mr. Altman not only to the Commission  
14          but to the District of Columbia. I know the Council has not  
15          yet confirmed him, but I have heard such things that suggest  
16          to me that that should not be a problem, and I look forward to  
17          working with him very closely and not having to waive our  
18          rules for late submissions.

19                   CHAIRPERSON CLARENS: Okay.

20                   MR. ALTMAN: Thank you for the welcome.

21                   CHAIRPERSON CLARENS: Okay. We move, then, on  
22          to item 4, Hearing Action, and that's Office of Planning.

23                   MS. KRESS: You might want to waive -- start  
24          with a preliminary matter to waive acceptance of the report  
25          before you turn it over to them.

26                   CHAIRPERSON CLARENS: Okay. Any objections to

1       waiving the report from the Office of Planning on the Premium  
2       Distributors for Lincoln PUD request for a hearing -- for a  
3       set-down hearing?

4                       Hearing none, the rules are waived, and we move  
5       on, then, to the presentation of the Office of Planning of 99-  
6       5C.

7                       MR. COCHRAN: For the record, my name is Steven  
8       Cochran -- I'm not used to this technological sophistication,  
9       I'm sorry. For the record, my name is Steve Cochran. I'm  
10      with the Office of Planning.

11                      Fort Lincoln Premium Distributors are  
12      requesting a consolidated review and approval of a PUD and  
13      then a related map amendment for a portion of square 4325,  
14      parcels 173 and 143.

15                      The rezoning that they're requesting is from  
16      R5D to CM1.

17                      Now, to give context, if you look at our  
18      report, the map that is third from the back shows the site  
19      context. We're looking at a portion of Fort Lincoln, the new  
20      town in Northeast Washington right near New York Avenue. A  
21      portion of this site is near the right-of-way for Eastern  
22      Avenue, an unbuilt right-of-way.

23                      If you're coming off of New York Avenue near  
24      South Dakota, you would go up the hill. The Premium  
25      Distributors site is at the top of the hill just before you  
26      get to the site that the Commission recently approved for

1 single-family homes at Fort Lincoln. This wan approval for  
2 approximately 100 single-family homes.

3 And you're probably familiar also with the site  
4 for the Fort Lincoln retail center. This would be immediately  
5 to the southwest of the proposed Premium Distributor site.  
6 The single-family homes that you approved are immediately west  
7 of the Premium Distributor site.

8 So, it's the topo map that's third from the  
9 back. If we're ready with that, I can move on.

10 The site itself is 13.43 acres.

11 CHAIRPERSON CLARENS: Are we all on the same  
12 page?

13 MR. COCHRAN: It looks like this.

14 CHAIRPERSON CLARENS: It is on the September 8  
15 Office of Planning report of the analysis of this case.

16 MR. COCHRAN: So, generally, the site again,  
17 you've got the single-family homes to the west. To the  
18 southwest, you've got the retail center, and then the Premium  
19 Distributor site is fairly clearly labeled at the top of that  
20 map.

21 Both the single-family homes and the retail  
22 center are -- or will be, rather, buffered by trees. The site  
23 itself is lower, significantly lower than the site of Fort  
24 Lincoln, the remnants of Fort Lincoln, so it would not be  
25 visible from that historic property.

26 The site is approximately 13.43 acres. The

1 applicant is proposing to erect a one-story, 164,000-square  
2 foot building on the site. The building would be no higher  
3 than 40 feet. About 132,000 square feet of that building  
4 would be used for distribution of beer to the District of  
5 Columbia and Montgomery County; 32,000 square feet would be  
6 used for the actual offices of the beer distributorship.

7 The proposal's been discussed by the ANC. I  
8 think you, like I, have just been handed a letter from the ANC  
9 saying that they have approved, within the limits of their  
10 approval, abilities the proposal. It has been discussed by  
11 DHCD and RLA.

12 However, OP received the application relatively  
13 recently. We have a few concerns that we'll be discussing  
14 with the appropriate parties before we write our final report.  
15 But we do feel that the application deserves a public hearing,  
16 and that's why we're requesting that the Commission set this  
17 down for a public hearing at the earliest appropriate time.

18 I'd be happy to, of course, going into any more  
19 details, as you require, but I know it's a long agenda.

20 CHAIRPERSON CLARENS: Okay. Well, I have three  
21 issues before we proceed to act on this case that I would like  
22 to discuss with the Commission.

23 And the first one has to do with the land use  
24 map for Fort Lincoln and how this use fits into the rest of  
25 the plan. We need to have -- I mean, it's exactly what I just  
26 said in reference to Florida Rock. We cannot look at these

1 things piecemeal. We need to look at all of Fort Lincoln. We  
2 have to go back to the master plan of Fort Lincoln, and we  
3 need to look at how this fits and how this industry fits.  
4 This, obviously, in the original plan was meant to be  
5 residential use.

6 MR. COCHRAN: Yes.

7 CHAIRPERSON CLARENS: Now, we are talking about  
8 an industrial use, a commercial use, which has very different  
9 implications to the whole Fort Lincoln area. So, it seems to  
10 me that we need to have a clear understanding by the applicant  
11 and with, obviously, analysis from you of what is happening in  
12 the entire and the implications of zoning change for the  
13 property.

14 The other issue that is of great concern and is  
15 linked to this somehow is the whole notion of traffic. We are  
16 introducing into Fort Lincoln, at least in this area of Fort  
17 Lincoln, a significant commercial traffic load, because this  
18 is a distribution center. So, you're going to have all kinds  
19 of truck traffic happening.

20 We don't have any idea as to when is this going  
21 to happen. Is this going to happen at three o'clock in the  
22 morning, and we have big diesel engines roaring through next  
23 door to a what we have just approved as a single-family home?

24 and I think that we need to -- and other  
25 residential areas that are around, even the possibility of an  
26 area to the -- I assume it's going to be to the southeast of



1 the property, which is in your plan classified as a possible  
2 hotel.

3 So, we have an issue of traffic, and I think  
4 that that is a very critical issue in this application.

5 And then, ultimately, that we have a -- and  
6 then next -- the last issue that I think is important is the  
7 environmental implications of putting an approximately what  
8 seems to me is going to be a 3.5 acre building on a 13 acre  
9 site that is heavily or topographically quite active.

10 This is not a flat site. This is a site that  
11 has significant topographic qualities to it, and we're putting  
12 a rather big building with -- and that's only the building.  
13 That's 3.5 acres of building in addition to, then, all the  
14 other areas for trucks and parking, et cetera, et cetera  
15 associated with the distribution center -- what the impact of  
16 leveling this site would have on the general vicinity.

17 And the last issue is that I think that this is  
18 a rather schematic presentation that is coming to us at this  
19 point from the applicant, and that this should be entertained  
20 as two-stage PUD application.

21 MR. COCHRAN: Mr. Chairman, would you like a  
22 response?

23 CHAIRPERSON CLARENS: Yes.

24 MR. COCHRAN: Okay. We -- I can speak to the  
25 last concern. I would not as far as schematics that the  
26 buildings that are illustrated there are indeed schematic.

1 They're actually representations of the type of building that  
2 would be put there. They are not the actual building  
3 proposed, but it would be very similar, because it would be a  
4 standard-type facility, what you see as one that's going into  
5 Northern Virginia.

6 All of the concerns that you raised are  
7 concerns that we've discussed internally, but we feel that all  
8 of these matters will be able to be discussed and, with great  
9 hope, resolved before we present our final report to you.

10 We're certainly not unaware of any of the  
11 considerations that you brought up. But we're only asking  
12 that it be set down. We have not given our final  
13 recommendation on whether it is an appropriate use for the  
14 site.

15 COMMISSIONER HOOD: Mr. Chair, I have a few --

16 CHAIRPERSON CLARENS: Go ahead.

17 COMMISSIONER PARSONS: Mr. Chairman, I share  
18 your concerns and instinctively oppose this. I can't believe  
19 that Fort Lincoln has come to this kind of use being discussed  
20 in it. I think the description of the applicant as to what  
21 the history of this site is is totally inadequate, and I  
22 really think we ought to postpone this until we look at it, as  
23 you have suggested.

24 For us to put this down for a hearing suggests  
25 we think this is a good use for this site and that it can be  
26 supported historically by RLA's plan for this site. I don't

1 think that's the case, and I think this is the site the U.S.  
2 Post Office was looking at one time, but I'm not sure.

3 In other words, there's so much history to this  
4 site, a residential community, which is about to be  
5 embellished by more single-family homes, and it seems to that  
6 this is a step in the wrong direction, a step in reverse to a  
7 quality new town in town, as it was described by President  
8 Johnson so many years ago. To place an industrial use here  
9 just doesn't make sense to me.

10 Further, in looking at the drawings, I see no  
11 provision that I can see for on-site storm water retention in  
12 an area that is extremely sensitive, and I can warn you, the  
13 Park Service is downstream as usual, but to use a portion of  
14 Eastern Avenue for apparently a future detention system -- the  
15 Eastern Avenue is a right-of-way of about 120 feet that is  
16 reserved in a park strip for a portion of Fort Circle trails,  
17 and I won't have to get into that, but to encroach into that  
18 public space to take care of one's storm water off a 3.5-acre  
19 building, I think is wrong.

20 And I don't know why the ANC supported this. I  
21 think when the citizens within this community realize what's  
22 happening to them, we're going to have an outrage, I certainly  
23 hope.

24 CHAIRPERSON CLARENS: Where do you read that  
25 they're planning to go to a -- I don't find the --

26 COMMISSIONER PARSONS: On the word "site plan"

1 -- on the drawing entitled "Site Plan." Have you got that?

2 CHAIRPERSON CLARENS: Oh, in their proposal.

3 COMMISSIONER PARSONS: It's in the fold-out

4 booklet.

5 CHAIRPERSON CLARENS: It's in the fold-out

6 booklet.

7 COMMISSIONER PARSONS: Fold-out under tab A,

8 sheet 3. Are you there? See where it says, "proposed parcel

9 area equals," do you see that up to the right of Eastern

10 Avenue?

11 CHAIRPERSON CLARENS: I see, okay, I get it.

12 I'm with you.

13 COMMISSIONER PARSONS: And you can the drainage

14 structures out in Eastern Avenue shown up in the right-of-way

15 here.

16 But that's not as important to me as why the

17 city, the RLA has made a decision that this is an appropriate

18 land use. It appears as though they're changing the urban

19 renewal plan as we are setting this down for hearing, which

20 seems on its surface to be an expedient.

21 CHAIRPERSON CLARENS: That is correct, and that

22 way why I proposed, first, to split this into a two-stage and

23 then hear the argument. We're not saying that the arguments

24 are valid at all. I concur with you. On face value, it seems

25 to me that this is an inappropriate use for this site given

26 its' topography, first of all.

1 COMMISSIONER PARSONS: Sure.

2 CHAIRPERSON CLARENS: Because we're not talking  
3 about something that can be in fact split and made to fit into  
4 a site, but we're really talking about taking a site that is  
5 heavily contoured and flattening it out and creating some  
6 major retaining walls. That's the only way that I can imagine  
7 that they're going to be able to park these trucks in these  
8 areas that they're showing here.

9 And that this is going to have a significant  
10 change, including views from New York Avenue as you enter the  
11 city where the site becomes somewhat visible, if I understand  
12 correctly.

13 MR. COCHRAN: Actually, on that one -- I  
14 wouldn't take issue with you on any of your other points. The  
15 applicant has contended but not yet shown us the lines of site  
16 that it would not be visible from New York Avenue.

17 COMMISSIONER PARSONS: I would agree with that.

18 CHAIRPERSON CLARENS: Okay.

19 COMMISSIONER PARSONS: The hotel proposed would  
20 be.

21 CHAIRPERSON CLARENS: Okay. So, then that  
22 issue is not valid. But all the other ones I think are.

23 So, that's what I'm saying. I mean, we can  
24 deny the request for a hearing. It seems to me that we should  
25 -- that it might give us an opportunity to look into the  
26 master plan for Fort Lincoln, which contemplated some

1 employment center and some light industrial uses, which I  
2 guess this would qualify as, but maybe this is the wrong site  
3 to do it in.

4 So, that's the only reason why I'm proposing  
5 that we move on to set it down.

6 COMMISSIONER PARSONS: I agree. It may be the  
7 right site but the wrong use because of its demand for a  
8 somewhat horizontal floor space.

9 CHAIRPERSON CLARENS: It might be the right use  
10 but the wrong site. It might be a use that could go into Fort  
11 Lincoln, but this is not the site.

12 COMMISSIONER PARSONS: It could be.

13 CHAIRPERSON CLARENS: Or vice versa.

14 COMMISSIONER FRANKLIN: Well, Mr. Chairman,  
15 having listened to you and to Mr. Parsons, but also seeing the  
16 endorsement from, I guess, just the single-member district of  
17 the ANC, which is the only ANC submission thus far, I believe,  
18 I would like to respectfully suggest that we might just defer  
19 the set down issue until our October meeting and give the  
20 Office of Planning an opportunity to give us a final report or  
21 a report that addresses the legitimate concerns that you and  
22 Commissioner Parsons have expressed.

23 COMMISSIONER PARSONS: I think that's an  
24 excellent suggestion and more fair than the approach I would  
25 take.

26 (Laughter.)

1 COMMISSIONER FRANKLIN: I still have an open  
2 mind.

3 COMMISSIONER HOOD: If I can just add my two  
4 cents. After I hear all the concerns, I was ready to go  
5 forward so they can come in and we can hear exactly what's  
6 going on with this project and give them a chance to give us  
7 some dialogue on exactly why they think this is the site and  
8 the use and everything that goes together.

9 But one of the concerns that I have after we  
10 have touched on those points and those concerns that you all  
11 have was the amenities package. I don't know whether that  
12 comes later, but I looked and I mean I looked quite a bit for  
13 an amenities package. I always do with PUDs.

14 And, also, I would say this for the ANC, as  
15 Commissioner Franklin said, the single-member district has  
16 approved this or would like to see it go forward, but to give  
17 the great weight, we need to make sure that staff lets the  
18 single-member district know that the ANC Commission needs to  
19 take a vote. It's nice for the single-member districts to do  
20 this, but the Commission, by law, will give it the full weight  
21 that is due.

22 I was ready to move forward with it, but -- I  
23 still am, actually, because I would like for them to come down  
24 and we exactly see how fits in.

25 CHAIRPERSON CLARENS: Well, I like Mr.  
26 Franklin's recommendation. I think that we've raised a number

1 of issues that I think the Office of Planning has taken note  
2 of. And I think that you can look at the entire Fort Lincoln  
3 situation and the different kind of land uses that are within  
4 the Fort Lincoln and were contemplated at the time of the  
5 approval of the plan for the town, and then come back to us  
6 with the issues that we've raised in a report.

7 And that we postpone, then, action on this  
8 request for a set down until the October meeting at which time  
9 we will receive, then, an additional report from Office of  
10 Planning dealing in detail with this issue and making a  
11 recommendation as to whether we should proceed or not. Okay?

12 COMMISSIONER HOOD: Mr. Chair, also, looking at  
13 the map, there are already some other proposed uses. Could we  
14 also make that inclusive, include everything else I see here  
15 -- a retail center, possible hotel --

16 CHAIRPERSON CLARENS: That's correct. That's  
17 what I said. Well, not only the office in the immediate  
18 vicinity but the entire Fort Lincoln area and how this fits  
19 into that whole thing, their traffic patterns, the  
20 contemplated traffic patterns, all of this was anticipated. I  
21 mean, this was a planned town.

22 So, this hasn't happened -- so, all of a  
23 sudden, we're changing a residential use to this light  
24 industrial use, and it seems to me that we need a little bit  
25 further information.

26 COMMISSIONER HOOD: So, we're not actually



1 turning down the set-down hearing, we're just --

2 CHAIRPERSON CLARENS: We're postponing it until  
3 October.

4 COMMISSIONER PARSONS: Also point out, I drove  
5 by the other day, and as you drive along New York Avenue, the  
6 portion to the other side of New York Avenue, between the  
7 railroad and New York, is under construction. Something's  
8 being built there, and that's part of Fort Lincoln, as well.

9 MR. COCHRAN: I believe that they're temporary  
10 retaining ponds. Fort Lincoln has a proposal that is not  
11 formalized that it be considered as an intermodal  
12 transportation center. The map that they have shown me  
13 indicates it as the intermodal site. I didn't put it on  
14 there, because I wasn't too confident of whether that would  
15 happen.

16 But it would be a bus depot for tourists coming  
17 into town to then view IMAX movies there and park their cars  
18 and then get buses into town. It wouldn't be a replacement  
19 for the ITC that has been the subject of discussion before.

20 CHAIRPERSON CLARENS: I think the point that  
21 Mr. Parsons is making is that in your analysis, you should not  
22 be only circumscribed to the area of Fort Lincoln. We should  
23 take a look at the entire area and see what's --

24 MR. COCHRAN: I'm actually very pleased to be  
25 able to do this more thorough analysis.

26 I feel it's important to note, though, that the

1 comprehensive plan has already been changed. The map now  
2 shows the site that they are requesting for rezoning as a PTE.  
3 It had formally been shown for residential. So, we'll have to  
4 -- you will have to wrestle with that issue also.

5 CHAIRPERSON CLARENS: Okay. Well, if you can  
6 give us that information, that will be helpful.

7 Do we need an action from the Commission?

8 MS. KRESS: I think it would be helpful. I'm  
9 not sure we do, but since we did on the other case, I think a  
10 formal action on postponement would be in order.

11 CHAIRPERSON CLARENS: Okay. So, I move to  
12 postpone the case with the additional request from the Office  
13 of Planning.

14 COMMISSIONER PARSONS: Second.

15 CHAIRPERSON CLARENS: Been properly moved and  
16 seconded.

17 All in favor signify by saying aye.

18 (Chorus of ayes.)

19 Opposed?

20 (No response.)

21 The ayes have it; so ordered.

22 COMMISSIONER PARSONS: Mr. Chairman, I would  
23 hope the Office of Planning would also give us some indication  
24 of the volume of expected employment coming out of this  
25 proposal.

26 CHAIRPERSON CLARENS: We have. That is in the

1 request.

2 COMMISSIONER PARSONS: Is it in the request?

3 CHAIRPERSON CLARENS: Yes, it is in the  
4 proposal.

5 COMMISSIONER PARSONS: Okay.

6 MR. COCHRAN: It's approximately the same --  
7 well, it appears that it's approximately the same as the  
8 current site -- as the current location on V Street and on New  
9 York Avenue, but it wasn't clear from the application whether  
10 there might be a slight increase in actual full-time employees  
11 or not. I'll clarify that.

12 CHAIRPERSON CLARENS: And on the issue of the  
13 amenities package, because if I understand it from reading the  
14 report that you submitted that part of the amenities or part  
15 of the advantages is that we are increasing the tax base, that  
16 we are keeping employment within the District, which is not  
17 really an amenity, because these people are by, if I  
18 understood correctly, in reading the report of the ABC, it's  
19 forcing them to have this distribution center within the  
20 District, so they cannot go anywhere else anyway.

21 And, so it is not very clear -- I mean, there  
22 was a number of issues cited in your report as to advantages,  
23 perhaps not amenities, advantages to this case, but they  
24 didn't seem to hold a lot of water.

25 MR. COCHRAN: I believe that with respect to  
26 the amenities that you have cited, oftentimes amenities are in

1 the eyes of the applicant.

2 But there is the real amenity that it's been  
3 given -- that in doing it as a PUD process, it does give both  
4 the community and this Commission a far greater say in what  
5 the building is going to look like, what the buffering can be,  
6 what the traffic, all those kinds of things.

7 That if they had simply asked for a rezoning to  
8 conform with the amended comprehensive plan map, nobody would  
9 have a say on those things, because this proposal is well  
10 under the limits that would be allowed by a matter of right  
11 use on the site, if it were rezoned to conform with the new  
12 comprehensive plan map. So, that's -- they are giving  
13 something in coming as a PUD.

14 CHAIRPERSON CLARENS: Well, okay. Somebody  
15 will deal with that in October.

16 MS. KRESS: Mr. Chairman, I might point out  
17 that the new Director of the Office of Planning, Mr. Altman,  
18 needs to leave, and I didn't know if the Commission wished to  
19 speak to him, ask him any questions, or interact with him in  
20 any way before he left today, because we really haven't had  
21 the opportunity to do that.

22 CHAIRPERSON CLARENS: Does the Director of the  
23 Office of Planning want to present the Office of Planning  
24 report, status report, or not?

25 MR. ALTMAN: I was going to present my status  
26 report, no. But I was going to let David present the longer

1 status report.

2 Did you need to conclude that item or is that

3 --

4 CHAIRPERSON CLARENS: I think that item is

5 concluded.

6 MR. ALTMAN: That's concluded, okay.

7 COMMISSIONER PARSONS: Your status report would

8 be quite interesting.

9 MR. BASTIDA: Mr. Chairman?

10 MR. ALTMAN: Well, I --

11 MR. BASTIDA: Mr. Chairman? In order to

12 conclude the item, the staff will record the vote four to zero

13 to postpone. Mr. Clarens moving it; Mr. Parsons second it.

14 Thank you.

15 CHAIRPERSON CLARENS: And the motion included

16 additional --

17 MR. BASTIDA: The request for additional

18 information is stated in the record from the Office of

19 Planning.

20 COMMISSIONER HOOD: Mr. Chairman, may I --

21 MR. BASTIDA: And I hope that the Office of

22 Planning would present its report in a timely fashion.

23 COMMISSIONER HOOD: May I just add on the

24 amenities package, if we set down and go for a hearing, and I

25 would ask the Office of Planning to look at that amenities

26 package again. Thank you.

1 CHAIRPERSON CLARENS: Very good. Okay.

2 Mr. Altman.

3 MR. ALTMAN: Oh, thank you. Well, thank you  
4 members of the Commission. I'll be brief. You have a long  
5 agenda before you, but appreciate the opportunity just to  
6 introduce myself to you and to meet all of you and to at least  
7 today observe the -- be a part of the Zoning Commission  
8 hearing. I actually learned quite a bit today.

9 As you may know, I come from the city of  
10 Oakland, California where I, for the past four years, have  
11 been the Planning Director for that city. And it's very  
12 interesting, many of the questions that you've raised about  
13 the relationship of planning to zoning and the role that  
14 planning should play with respect to that are exactly ones  
15 that we worked on in Oakland.

16 Different than the structure here, in Oakland,  
17 actually, I was in charge of all long-range planning,  
18 neighborhood planning, zoning, historic preservation, permit  
19 reviews. So, that whole process was, together, is you were  
20 able to make that very strong connection with planning and the  
21 regulatory process.

22 Because I think many of the questions that you  
23 raised are ones that is part of the, if I were to say, the  
24 agenda of planning and something I think the Mayor is very  
25 interested in supporting is how we can provide to you and to  
26 the city a very strong foundation in terms of the context

1 within which decisions about projects are made and occur so  
2 that they're not simply an isolation or seemingly ad hoc or  
3 disconnected from one another, but you get a feel of how does  
4 this project fit into a larger framework for the neighborhood,  
5 for the city, which I think will help greatly with your  
6 decisionmaking for the community, for the developers.

7 One thing I've heard consistently is how to  
8 create clear processes that are understandable that allow for  
9 participation by all parties so that when it comes to the --  
10 an item comes before the Zoning Commission, you have a sense  
11 of how a project has been vetted and how a project has been  
12 discussed and all the issues have been raised so that when it  
13 comes to you it's not the first time or the last time you've  
14 heard it. But you really have a sense of what all those  
15 issues are, and the parties have all participated to that  
16 point, so it's not the first time they appear.

17 Of course I haven't been a part of this. These  
18 are very general observations of how I operate. It's not  
19 necessarily -- you may be doing that already, but it's  
20 something I'd like to reinforce, strengthen, or if it's not  
21 there, institute, which is the ways that I think the  
22 development community, community organizations and the  
23 commissions can all, I think, work together to create good  
24 projects for the city, and a part of that is very sound  
25 planning that we can bring to it.

26 Something very specific in terms of our

1 reports, I think our reports need to provide you with the kind  
2 of planning analysis exactly as you've requested. Without  
3 speaking to the Florida Rock or the project that was just  
4 before you, Fort Lincoln, which I haven't been involved, but,  
5 Fort Lincoln, I now will be, I think it's -- the questions you  
6 asked are exactly on target, which is how does a large-scale  
7 project of a million plus square feet or a Fort Lincoln where  
8 it's a different kind of use that may have been once  
9 contemplated, how does that fit into the development patter of  
10 the area?

11 How does that fit into not only the goals in  
12 the neighborhood but the larger goals of the city in terms of  
13 where development and the type of development should be  
14 located? Because they're exactly the kinds of questions and  
15 guidance we should be providing, and I look forward to our  
16 doing that.

17 And, as you may know, the Office of -- the  
18 situation of the Office of Planning is one where there's  
19 limited -- has been very limited staff. What attracted me  
20 here, frankly, was the Mayor's vision, I think, for planning  
21 and for the rebuilding of an effective planning function in  
22 the city. The Mayor and the Council have dedicated sort of a  
23 -- put a downpayment on that, if you will, in terms of some  
24 new staff positions. And we want to bring the best quality,  
25 the highest quality talent that we can to the city and attract  
26 them here so they can take on these kinds of projects and



1 challenges.

2 So, I'm very encouraged by -- obviously by what  
3 the Mayor has laid out for me and for, I think for the city in  
4 terms of his understanding and appreciation for planning. I  
5 think, as you probably know, the Mayor really appreciates  
6 planning. He has a background in development and planning.  
7 It's not something that's foreign to him; in fact, it's  
8 something he has great sort of affinity for and really wants  
9 to encourage.

10 So, I think you're going to see in the next  
11 couple of months, as October comes and assuming I'm confirmed  
12 -- or, if not, someone else -- but that we'll begin to rebuild  
13 a planning function in this city that's going to be very  
14 proactive instead of what necessarily we've had to be reactive  
15 to projects or proposals, and we're going to be able to, I  
16 think, get out in front of those.

17 So, I look forward -- and let me just say in  
18 terms of my -- I always work very closely with the Planning  
19 Commission in the cities I worked for. As Planning Director,  
20 I look forward to working with your Executive Director and  
21 with the Commission, so we have a really open dialogue and  
22 communication on all of these issues.

23 And I look forward to finding the ways to do  
24 that, whether that's through director's reports or through  
25 other ways, even if an issue isn't necessarily before you, to  
26 give you sort of an advanced warning -- you know, here's an

1 issue that may be coming down the road; here are some changes  
2 in this area that are occurring. So, we can sort of be  
3 proactive, as well, in terms of informing the Commission about  
4 major issues that can then help you with specific projects.

5 So, I guess that's a fairly long-winded  
6 introduction to say that I greatly look forward to working  
7 with you. I'm somebody who gets very involved in these types  
8 of issues, so you'll be seeing me, and I look forward to  
9 meeting with you and your -- it won't be a detached office or  
10 a detached planning director but very much look forward to  
11 what I see as a partnership with this Commission, because I  
12 think it's very important.

13 And that concludes my introduction. Thank you.

14 CHAIRPERSON CLARENS: Excellent, Mr. Altman.

15 Let me just say that the report on Florida Rock  
16 that came from your office was very helpful, at least to me,  
17 in its format and the way that it approached the issues and  
18 dealt with each of the issues. That was very helpful in  
19 understanding a rather complex and difficult to understand  
20 project.

21 Any comments from the other commissioners to  
22 Mr. Altman?

23 Mr. Parsons?

24 COMMISSIONER PARSONS: Welcome. We've met on  
25 other occasions, but I haven't heard him articulate some of  
26 the thoughts that he just did.

1                   The early warning system, as you can see in the  
2                   case just before us, is critical, and I know some of these  
3                   things move very quickly, but if there's some way we could  
4                   develop that kind of rapport, that would be a first, so that  
5                   we're in a proactive mode, as well. Welcome.

6                   COMMISSIONER HOOD: I, too, also want to  
7                   welcome you, and I'm looking forward to a good working  
8                   relationship.

9                   COMMISSIONER FRANKLIN: Of course, I've already  
10                  welcomed you. I only need to say that the fault lines here  
11                  are not geological; they're just political.

12                  (Laughter.)

13                  CHAIRPERSON CLARENS: Thank you very much, Mr.  
14                  Altman. And, with that, we will then move on to item 5, Final  
15                  Action.

16                  Mr. Bastida.

17                  MR. BASTIDA: The first item on the final  
18                  action is the 98-19, which is the regulatory reform proposals.

19                  This was discussed in executive session, and --

20                  MS. KRESS: Well, I -- go ahead; I'm sorry.

21                  I just felt that, perhaps, since Alan had the  
22                  -- basically, this had been approved before and then was sent  
23                  to Corp Council for its review for consistency and the  
24                  viability. And, so the final comments have become the  
25                  Corporation Counsel's, and I thought it might be appropriate  
26                  to hear from Corporation Counsel, Mr. Bergstein, on this.

1 MR. BASTIDA: Yes, that's what I was going to  
2 do to ask Mr. Bernstein to take the reign and move us through  
3 it.

4 CHAIRPERSON CLARENS: Mr. Bernstein?

5 MS. KRESS: Bergstein.

6 MR. BERGSTEIN: Do you want me to go through  
7 what were the substantive areas of change, since the proposed  
8 or just the matters that we noted weren't deleted from what I  
9 thought was going to be the version that is before the  
10 Commission?

11 MS. KRESS: I believe that you might just run  
12 through the items that should be changed and then center the  
13 discussion, perhaps, around the deviations. I think that  
14 might be the most helpful.

15 MR. BERGSTEIN: All right. I'm going to skip,  
16 though 2521, section 2521, which I think is an issue for the  
17 Commission that I was involved with, but I believe that there  
18 was a change from the original proposed version. I think the  
19 Commission needs to discuss that.

20 The first change that I recommended was in  
21 section 3010.3, which appears on page 8 of the version that  
22 you have before you. It merely inserts a reference to the  
23 DCAPA to make clear that the contested case provisions of the  
24 DCAPA apply to Zoning Commission actions.

25 That's well known, but the problem is that  
26 because both the Zoning Commission rules of procedure and the

1 BZA rules of procedure contain a catch-all waiver provision,  
2 it's always been my concern that by accident one of these  
3 provisions that merely reflect the DCAPA might be waived and  
4 of course that can't happen.

5 So, by clarifying that a few times, it's a way  
6 that when the Commission or I or my predecessor might be  
7 reviewing the rules of procedure, it's a real flag to  
8 recognize that the DCAPA is the ultimate authority of how  
9 contested cases are handled before the Zoning Commission and  
10 before the Board of Zoning Adjustment.

11 The next section is really two sections. It's  
12 3020.2, which is the Zoning Commission version, and 3117.4,  
13 which is the BZA version. And this is a section, or sections,  
14 that limit the total amount of time for testimony for both  
15 proponents and persons and parties in opposition to a  
16 collective 60 minutes for each.

17 One of the comments pointed out that there was  
18 a difference in the language between the two sections, both in  
19 terms of some minor language disparity, and, in the case of  
20 the BZA section, apparently, it was either witnesses or  
21 parties that were left out.

22 And, so what was done was to actually conform  
23 these two sections so that they use absolutely identical  
24 language.

25 The other change that was made was to exempt  
26 ANCs from parties, and ANC, at least an effective ANC is

1 automatically a party, but there was a concern after the  
2 proposed rules that to lump the ANCs in within the 60 minutes,  
3 even though it can be waived by the presiding officer, would  
4 not allow the ANCs to be able to fully articulate their  
5 position.

6 And just as the Office of Planning is permitted  
7 as much time as it needs to present its position and  
8 particularly because the agencies are to be given great  
9 weight, I think there was a concern that any rule that could  
10 limit the ANCs' ability to present its views might be contrary  
11 to the great weight requirement. And, so there was a specific  
12 exemption for ANCs in both of those rules.

13 I would point out that in the first rule,  
14 3020.2, the word "aggregate" was supposed to be deleted,  
15 because the word "collectively" or the phrase "collectively"  
16 -- "shall collectively" was used instead in both sections for  
17 the sake of conformity. So, it's a redundancy that should be  
18 eliminated.

19 I don't know if you all want to -- if the  
20 Commission wants to discuss these things as I go along or just  
21 have me go through this.

22 CHAIRPERSON CLARENS: No, I think that we just  
23 want to go -- I think we went through this in executive  
24 session. I think we just want to go through your comments  
25 quickly just so that it's on the record before we act on final  
26 action.

1 MR. BERGSTEIN: All right, then, to continue  
2 on, rule 3022.1, page 19, again, added a reference to the  
3 DCAPA. 3022.5, actually, the change was that there was a  
4 sentence at the end of 302.4 -- 3022.4, which was exactly  
5 similar to a sentence in 3022.5, so that last sentence in  
6 3022.4 was eliminated.

7 3024.7 was amended -- was modified in the final  
8 rules to combine the thoughts that were in 3024.8, which  
9 concerned PUDs. For some reason PUDs were pulled out  
10 separately in 3024.8. So, the reference to PUDs was put into  
11 3024.7, and 3024.8 was supposed to be deleted in the version  
12 that you have. And that should be done in the final version.  
13 And that's a rule that allows the Zoning Commission to take a  
14 proposed action at the end of a hearing.

15 CHAIRPERSON CLARENS: That's correct.

16 MR. BERGSTEIN: Section 3116.2 was supposed to  
17 be deleted, because it was moved down and created as 3117.12,  
18 and this is the BZA rule, and it's actually the same as the  
19 rule I just discussed. It allows the BZA at the end of a  
20 hearing to take an action on a case before it. For some  
21 reason, it was put in the expedited application process, and I  
22 think that was just a codification error. It belongs at the  
23 end of the hearing.

24 CHAIRPERSON CLARENS: Correct.

25 MR. BERGSTEIN: So, that's what we did. But we  
26 need to delete 311.6.2.

1                   3125.2 through 3125.5 represents the final  
2       decision process for the BZA. I had recommended that no  
3       changes be made in what is the original BZA rules, which is  
4       3331.2 through 3331.5. And that, I thought, had been agreed  
5       to at the staff level for recommendation to you.  
6       Unfortunately, the original proposed rules, which I have a  
7       problem with, remain in the final rules.

8                   And it is still my recommendation that the  
9       original BZA rules on final decisions, as they now exist,  
10      remain, because they do reflect the provisions of D.C. Code 1-  
11      1509, and I'm concerned that there seems to be a disparity  
12      between what's in the proposed rule and what's in that  
13      section. And, as I indicated, that section would govern.

14                  Lastly, section 3125.10 was added to expressly  
15      authorize either the BZA Chair or the Office of Zoning  
16      Director to sign final BZA orders that have been approved by  
17      the Board.

18                  The provision originally appeared as 3117.4K,  
19      which is, again, the hearing procedure, and it didn't make any  
20      sense where it was; that in the middle of the hearing, the BZA  
21      would vote to allow the Office of Zoning Director to sign a  
22      final decision that there hadn't even been a hearing concluded  
23      on.

24                  So, it was my recommendation to move that  
25      provision to the final decision process, and it adds the  
26      authority of the BZA Chair to also sign some of these orders.



1                   And those are the substantive changes that  
2           appear in your proposed -- in your final rules.

3                   CHAIRPERSON CLARENS:   Okay.   Any further  
4           comments on the text amendment?

5                   COMMISSIONER PARSONS:   Only to move approval,  
6           Mr. Chairman, as Mr. Bergstein has outlined his changes.

7                   COMMISSIONER HOOD:   Second the motion, Mr.  
8           Chairman.

9                   CHAIRPERSON CLARENS:   It's been verbally moved  
10          and seconded.

11                  All in favor signify by saying aye.

12                  (Chorus of ayes.)

13                  Opposed?

14                  (No response.)

15                  The ayes have it; so ordered.

16                  MR. BASTIDA:   Mr. Chairman, the staff would  
17          record the vote four to zero.   Mr. Parsons moved it for  
18          approval, and Mr. Hood second it.   Thank you.

19                  MS. KRESS:   You do still need to discuss the  
20          deviation issue.

21                  MR. BERGSTEIN:   That's correct.   That's section  
22          2521.

23                  CHAIRPERSON CLARENS:   So, maybe we should not  
24          have -- so, we are now going back to --

25                  MS. KRESS:   The deviation issue was the one  
26          that needed the most discussion, and I think Mr. Bergstein was

1 just going through the more perfunctory changes, as  
2 recommended by himself regarding the regs.

3 CHAIRPERSON CLARENS: So, we need to, then,  
4 reopen the --

5 MS. KRESS: No, you're just past what he just  
6 spoke to. Now, you need to speak to the deviation.

7 CHAIRPERSON CLARENS: Well, we can't just take  
8 amendments. Well, I thought we had just passed the text  
9 amendment.

10 MR. BASTIDA: You have passed it in fact, Mr.  
11 Chairman, but for this item, we have provided you with a new  
12 section. We have section 2522.2 in which the Office of Zoning  
13 determined that certain things should be taken out, and it's  
14 shown as a strike-out.

15 CHAIRPERSON CLARENS: I understand that.  
16 That's why I asked if there was something else, and I --

17 MR. BERGSTEIN: I tried to say at the beginning  
18 that my comments were limited to chapters 30 and 31, which are  
19 actually the Zoning Commission and BZA new rules of  
20 procedures. I wasn't commenting on changes to section 2522,  
21 which was added on to the proposed rules.

22 And what you have done is to vote to adopt the  
23 changes to chapters 30 and 31 in your final rules. But you do  
24 need to address this additional rule, which was added into the  
25 proposed package.

26 CHAIRPERSON CLARENS: I see. I understand.

1 COMMISSIONER FRANKLIN: Mr. Chairman, I move  
2 the adoption of the language that appears in the text given to  
3 us in 2522.1, but the deletion of the material appearing in  
4 2522.2, with the exception of the first sentence, thereof,  
5 which I would move be added to 2522.1.  
6 COMMISSIONER PARSONS: Second.  
7 CHAIRPERSON CLARENS: And that phrase would be  
8 added at --  
9 COMMISSIONER FRANKLIN: At the end, at the end.  
10 CHAIRPERSON CLARENS: -- of the first sentence  
11 in 2522.1  
12 COMMISSIONER FRANKLIN: Right.  
13 CHAIRPERSON CLARENS: Is that correct?  
14 COMMISSIONER FRANKLIN: Correct.  
15 MR. BASTIDA: Correct.  
16 CHAIRPERSON CLARENS: Okay.  
17 All in favor? Well, is that a motion?  
18 COMMISSIONER FRANKLIN: It's a motion, Mr.  
19 Chairman.  
20 CHAIRPERSON CLARENS: And it's seconded?  
21 Seconded by Mr. Parsons?  
22 And all in favor?  
23 (Chorus of ayes.)  
24 Opposed?  
25 (No response.)  
26 The ayes have it, and so ordered.

1 MR. BASTIDA: Mr. Chairman, the staff will  
2 record the vote on 2522 four to zero. Mr. Franklin moved it;  
3 Mr. Parsons second it.

4 CHAIRPERSON CLARENS: Very good.

5 We'll move on, then, to item B. That completes  
6 the regulatory reform action -- final action on regulatory  
7 reform. Is that correct?

8 MS. KRESS: That is correct.

9 MR. BASTIDA: That is correct, Mr. Chairman.

10 CHAIRPERSON CLARENS: We move, then, to item B.

11 MR. BASTIDA: Item B is a old case that somehow  
12 or another it was postponed. It was heard by Mr. Franklin,  
13 Mr. Parsons, and Mrs. Kress, and Mrs. Bennett, and was  
14 approved. It was a proposed approval.

15 The Office has pulled out the file, has  
16 extrapolated all the actions taken and has provided you with  
17 an order, and at the same time, it has provided you with an  
18 entire set of the record. The record was sent to everybody  
19 even though the only ones that required to receive the record  
20 was Mr. Hood and Mr. Clarens.

21 And we are open to any discussions, and we  
22 would like to hear from the commissioners to see how we  
23 further can clarify this item.

24 I would like for Mr. Clarens and Mr. Hood to  
25 state into the record that in fact they had the read record in  
26 its entirety. Thank you.

1 COMMISSIONER HOOD: Mr. Chair, I have read the  
2 record in its entirety. I reviewed it, and I do have some  
3 concerns when we're ready for discussion.

4 CHAIRPERSON CLARENS: I'm going to recuse  
5 myself from this action. I would lead the discussion, but I  
6 think that we have three commissioners -- I have not read the  
7 record. If that record came to me, I am not cognizant of it,  
8 and I have not reviewed it. So, I'm going to not participate  
9 in the discussion, but I can definitely orchestrate it.

10 So, if we have any questions, then, Mr. Hood  
11 why don't you start with your questions, your issues.

12 COMMISSIONER HOOD: Well, first of all, this, I  
13 believe, was in 1997, and some of the -- things change, and,  
14 basically, some of them I didn't have any problems with, and  
15 this goes back to what we talked about earlier, the overall  
16 perspective and the view of the whole area. For example, on  
17 zoning change number 6, I believe it's page number 7 in the  
18 Office of Planning report.

19 MR. BASTIDA: Excuse me, Mr. Hood, that is the  
20 Office of Zoning report.

21 COMMISSIONER HOOD: Oh, the Office of Zoning  
22 report. Okay, excuse me.

23 Jill Dennis worked for the Office of Zoning?

24 MR. BASTIDA: Oh, you're talking about the  
25 original report --

26 COMMISSIONER HOOD: Right.

1 MR. BASTIDA: -- of the Office of Planning.  
2 Oh, okay. I thought you were referring to our report that we  
3 provided.

4 COMMISSIONER HOOD: Now, correct me if I'm  
5 incorrect, but I believe one of the changes was going from  
6 R01B to CM1? And it's only taken a portion on Adams Street,  
7 and it's going to make that a CM1. I believe that portion,  
8 which is already zone R01B serves as a buffer.

9 And this is why we run into so many problems  
10 down here, because you have that dividing line between  
11 industrial and residential, and what we're doing here now,  
12 we're doing encroachment, which is already satisfied as R01B.  
13 So, I have a problem specifically with this one where we're  
14 going from a proposed change from R01B to CM1.

15 MS. KRESS: Where is that?

16 MR. BASTIDA: Do you remember the specific --

17 COMMISSIONER HOOD: Actually, it's on page 11.  
18 In the documented data, Jill Dennis, Director.

19 MR. BASTIDA: Mr. Hood, that was the original  
20 report of the Office of Zoning -- I mean, the Office of  
21 Planning, I'm sorry. That was not adopted by the Commission.

22 The Commission adopted the proposed rulemaking  
23 -- I mean, the proposed order that was sent to you. And if  
24 you see that on the proposed order, you will find that that is  
25 not included in it.

26 COMMISSIONER HOOD: Well, I guess that kind of

1 confused me, then, because I'm reading --

2 MR. KARKEET: Mr. Hood? Let me just say that a  
3 number of the original proposals that the Office of Planning  
4 made were removed by the Commission itself --

5 COMMISSIONER HOOD: Okay.

6 MR. KARKEET: -- during the proceedings. And  
7 that order, number 909, reflects those changes.

8 COMMISSIONER HOOD: Okay. So, which document  
9 do I need to have in my hand right now?

10 MR. KARKEET: You should have the order 909, as  
11 provided by the Office of Zoning.

12 CHAIRPERSON CLARENS: Let me suggest one thing.  
13 Let me say that perhaps what we need in order to make an  
14 intelligent decision here is because Mr. Franklin and Mr.  
15 Parsons participated in this case and acted on it, and Mr.  
16 Hood is trying to familiarize himself with the case, that  
17 perhaps Mr. Hood can be briefed on the case by staff, and we  
18 can postpone action on this case. It has been sitting there  
19 for a couple years.

20 MS. KRESS: Yes. In fact, that was one of the  
21 first things that I think when some of the new staff came on  
22 board we decided to do, was to go back and reevaluate the last  
23 couple of years to make sure we've picked up everything.

24 This is certainly older, and I think especially  
25 if Commissioner Hood has questions, it would be good if he  
26 comes in and sits and discusses this with staff so we can

1 inform him, not to make a decision, but just to inform him of  
2 all of the appropriate information. And, so, perhaps, I see  
3 where you're heading. A postponement of this until next month  
4 might be appropriate.

5 CHAIRPERSON CLARENS: Would that something that  
6 will help you?

7 COMMISSIONER HOOD: That is exactly -- I would  
8 not be prepared to vote on this today until I have further  
9 clarification.

10 MS. KRESS: If it's already two years late, I  
11 don't really think another month at this point will make a big  
12 difference.

13 CHAIRPERSON CLARENS: Okay. So, we are  
14 postponing the 96 action -- 96-12Z.

15 We then move to 99-3Z, the DD Text amendments.

16 MR. BASTIDA: Mr. Karkeet will lead the  
17 discussion on it. 99-3Z.

18 MS. KRESS: Are you prepared?

19 MR. KARKEET: No, I'm not.

20 MS. KRESS: All right, I will go ahead. I  
21 believe Mr. Bastida -- and, as you all are aware, he's  
22 recently had major surgery -- is going to be leaving us for  
23 the afternoon. And, so I will continue on.

24 The 99-3Z --

25 CHAIRPERSON CLARENS: Ms. Kress, before we  
26 proceed, was there any action on the previous case or are we



1 just postponing it?

2 MS. KRESS: Again, if you wish --

3 CHAIRPERSON CLARENS: I don't think we need to.

4 MS. KRESS: I don't think we need to. This  
5 one's already sat for two years. I don't think we need to  
6 officially postpone for one month.

7 CHAIRPERSON CLARENS: Okay.

8 COMMISSIONER PARSONS: Let me add, if I can,  
9 the trouble with reading the order draft is it has no maps  
10 attached to it. Not that it should, but just if -- Mr. Hood,  
11 if you get engaged and find that there is something you'd like  
12 to describe to us, if the staff could prepare a map of what  
13 was proposed and what is in the order for that particular area  
14 so it would help us with the discussion. I don't think that  
15 would be too difficult.

16 But if you are persuaded that everything's  
17 okay, then we don't have any reason to have new diagrams.

18 COMMISSIONER HOOD: From what I'm looking at  
19 here in the order -- see, I went back and looked at the  
20 material, and now that I'm looking in the order, it doesn't  
21 even exist anymore.

22 COMMISSIONER PARSONS: Change number 6 is no  
23 longer.

24 COMMISSIONER HOOD: It's not even in here.

25 MS. KRESS: That's been part of the problem,  
26 and it was also somewhat misadvertised. It was advertised as

1 it was originally advertised, which was incorrect, because  
2 during the proceedings, the Zoning Commission dropped several  
3 pieces. And, so we had quite a few people confused because of  
4 the way it was advertised.

5 CHAIRPERSON CLARENS: So, we don't have -- my  
6 only question is perhaps a legal issue. I think that a Zoning  
7 commissioner can be briefed by the staff on the history of a  
8 case in order to understand what led to the order that is --  
9 that the person's supposed to -- and then the material is  
10 presented, and they can analyze the material to confirm --

11 MS. KRESS: Absolutely.

12 CHAIRPERSON CLARENS: -- that the  
13 recommendations or the explanations of the staff are correct.

14 So, I think that if we can proceed on the basis  
15 of that, that will be much helpful to you.

16 COMMISSIONER HOOD: Right, and then I apologize  
17 for those who have been waiting on this, but I want to make  
18 sure I make an informed and intelligent decision.

19 CHAIRPERSON CLARENS: Absolutely.

20 MS. KRESS: Absolutely.

21 CHAIRPERSON CLARENS: No question about it.

22 Very good, okay. Back, then, to the DD Text  
23 amendment.

24 MS. KRESS: As you all are aware, this is two  
25 parts -- well, probably three by the time we're done. But 99-  
26 3Z is the DD Text amendment, and you did approve this very

1 order as preliminary -- I mean, as proposed action. It has  
2 now been to NCPC, and NCPC basically says that it does not  
3 affect the National Capital Planning Commission area.

4 However, it does reinforce the strong feeling  
5 of NCPC for the residential aspect in the downtown area, and  
6 in fact positively reacts to this order and is in agreement  
7 that it should be finally approved.

8 So, I don't know if you have any questions.

9 CHAIRPERSON CLARENS: This is, again, your  
10 request in final action on an order that has already been  
11 voted by the Commission, I believe, unanimously at the time  
12 that it was.

13 MS. KRESS: I believe so.

14 COMMISSIONER FRANKLIN: I move its approval on  
15 final, Mr. Chairman.

16 COMMISSIONER HOOD: I second the motion.

17 CHAIRPERSON CLARENS: All in favor signify --  
18 further discussion?

19 Hearing none, all in favor signify by saying  
20 aye.

21 (Chorus of ayes.)

22 Opposed?

23 (No response.)

24 MR. ERANDU: Staff records the vote four to  
25 zero to approve order 908.

26 CHAIRPERSON CLARENS: Three to zero.

1                   MR. ERANDU: Oh, three to zero to approve, Mr.  
2                   Franklin, Mr. Hood, and Mr. Parsons.  
3                   CHAIRPERSON CLARENS: No, Mr. Clarens. Mr.  
4                   Parsons did not participate, is that correct?  
5                   MR. ERANDU: Well, then, Mr. Clarens. Thank  
6                   you.  
7                   CHAIRPERSON CLARENS: Mr. Franklin, I  
8                   understand that you're going to have to leave us in a short  
9                   period of time. Is there any particular case that we want to  
10                  take out of order of the balance of the final actions that we  
11                  would need to take while you're still with us?  
12                  COMMISSIONER FRANKLIN: I left with Ms. Kress  
13                  my proxy on the remainder of the agenda.  
14                  CHAIRPERSON CLARENS: Very good.  
15                  COMMISSIONER PARSONS: I would request you vote  
16                  on the Oxon Cove matter while I'm out of the room.  
17                  COMMISSIONER FRANKLIN: Okay.  
18                  COMMISSIONER PARSONS: Can you do that right  
19                  now?  
20                  MS. KRESS: That's the next suggestion.  
21                  CHAIRPERSON CLARENS: Okay. So, then we move  
22                  on, then, to actually the next item on the agenda, which is  
23                  the 98-16C, the Consolidated PUD and Map Amendment for Oxon  
24                  Cove.  
25                  We have an order in front of us --  
26                  MS. KRESS: Which you have not read until this

1 weekend. You did not have this before.

2 CHAIRPERSON CLARENS: I understand that.

3 MS. KRESS: When we made the preliminary  
4 proposed action, this order did not exist. And, so I was just  
5 saying for the record this is new for all of the Commission  
6 members.

7 COMMISSIONER FRANKLIN: Mr. Chairman, I have  
8 read the proposed order, and I move its adoption subject to  
9 some minor changes that I have suggested to counsel.

10 COMMISSIONER HOOD: And I will second the  
11 motion.

12 CHAIRPERSON CLARENS: It is has been properly  
13 moved and seconded.

14 All in favor signify by saying aye.

15 (Chorus of ayes.)

16 Opposed?

17 (No response.)

18 The final action on the order is approved.

19 MS. KRESS: As amended.

20 CHAIRPERSON CLARENS: As amended.

21 MR. ERANDU: Staff will record the vote three  
22 to zero to approve order 902, as amended. That's Mr.  
23 Franklin, Mr. Hood, and Mr. Clarens. Thank you.

24 COMMISSIONER HOOD: Mr. Chair, can I move for a  
25 reconsideration on that one, because I did -- I've just  
26 noticed that I had a correction in the summary of evidence or

1 is that just a staff -- can the staff deal with it?

2 MS. KRESS: If it's very minor.

3 CHAIRPERSON CLARENS: Do you want to raise it  
4 to the attention of the Commission?

5 COMMISSIONER HOOD: Right. I don't know  
6 whether -- it's just the wording of the -- where it says "The  
7 Office of Planning initially recommended approval of the  
8 application." We treated both of these cases as separate,  
9 from the one that happened in November of '98 as well as to  
10 what happened in January of '99, and it was never presented to  
11 us as the Office of Planning in support of that project, and  
12 once we separated both cases, all the information was  
13 submitted to us as though it was a new case.

14 CHAIRPERSON CLARENS: It was a --

15 COMMISSIONER HOOD: It's something that we need  
16 to look into, because it states here that the Office of  
17 Planning initially recommended approval of this application,  
18 and that was not the case in this case.

19 MS. KRESS: Maybe we can ask for clarification.  
20 Is Mr. Bergstein still here?

21 Do you understand the point that Commissioner  
22 Hood is making? In the fall, when the case first came before  
23 us, the Office of Planning did in fact support the case, and  
24 then when it came back in its revised version this spring,  
25 they did not.

26 And Commissioner Hood is concerned that the way

1 we're depicting this is incorrect, because there were actually  
2 two different cases.

3 MR. BERGSTEIN: Well, I thought that it was the  
4 same proceedings, but, in essence, there was a substitute  
5 application, and so that the Office of Planning supported the  
6 original application, and then opposed the revised  
7 application. And maybe if that's what you're speaking of, we  
8 could change it to reflect that.

9 COMMISSIONER HOOD: Right, and that's exactly  
10 what I'm speaking of, because the RFP did change, and we, I  
11 think, requested at the time that we submit that as a new --  
12 starting all over again, all the information and everything  
13 else.

14 MS. KRESS: It was officially all new  
15 information, but we didn't make it formally a new case. It  
16 was still a continuation of the former case, although we had  
17 all new information from which we then began.

18 CHAIRPERSON CLARENS: Well, that's my  
19 recollection. My recollection --

20 MS. KRESS: So, legally, it is a continuation.

21 CHAIRPERSON CLARENS: -- is that it is a  
22 continuation of the same case, and, therefore, the way it's  
23 stated that the Office of Planning initially recommended  
24 approval of the original application and then changed its mind  
25 is correct.

26 COMMISSIONER HOOD: Okay.

1 MS. KRESS: But I think you can just maybe  
2 modify your motion to accept that comment for clarification in  
3 the final order.

4 COMMISSIONER HOOD: Okay, that's what we'll do  
5 then. I don't think that -- do I need to make a motion?

6 MS. KRESS: No, I think there can just be  
7 consensus --

8 COMMISSIONER HOOD: Okay, consensus.

9 MS. KRESS: -- as I believe there is.

10 COMMISSIONER HOOD: Thank you.

11 CHAIRPERSON CLARENS: Very good. Anything else  
12 on this -- on the --

13 MS. KRESS: Mr. Franklin, you might call  
14 Commissioner Parsons back, because we're going to lose a  
15 quorum very rapidly.

16 CHAIRPERSON CLARENS: Okay, the -- is Mr.  
17 Parsons joining us? He's not here yet? Okay, we'll stand in  
18 recess for a minute until Mr. Parsons joins us.

19 (Whereupon, the foregoing matter went off  
20 the record at 3:46 p.m. and went back on  
21 the record at 3:47 p.m.)

22 CHAIRPERSON CLARENS: Okay, we're back in  
23 session, and the next case is final action on 99-2M, that's  
24 1000 K Street, N.W. And we have before us an order that was  
25 approved by this Commission and sent on to NCPC, and it has  
26 come back saying that there is no conflict with the federal



1 interest, and --

2 MS. KRESS: But with revised plans.

3 CHAIRPERSON CLARENS: But with revised plans,  
4 that's correct.

5 MS. KRESS: From NCPC. NCPC returned this to  
6 us approving revised plans. Those revised plans reflect a  
7 change in the parapet height of three feet.

8 And, in addition, there is the issue of  
9 signage. We received a letter from Wilkes Artis addressing  
10 the signage concerns that were expressed at the meeting when  
11 the proposed action was taken with drawings signifying and  
12 showing the signage that they are proposing on this order.

13 CHAIRPERSON CLARENS: Very good. And we need  
14 to clarify -- we talked about this in the executive session,  
15 and I think we need to clarify that we need to have a drawing  
16 that records all of this alternatives in its final form, as  
17 approved by the Commission, in some way or another.

18 MS. KRESS: Yes, if you don't mind, let me just  
19 clarify a little bit. We have two sets of drawings, one which  
20 deals with the change in the parapet height, another one which  
21 deals with the signage. The two of them do not match, and on  
22 both of them, it says "glass and metal internally illuminated  
23 a lantern typical," which is not true. We know that our vote,  
24 and the order so reflects, only allows the internal  
25 illumination on a central lantern.

26 CHAIRPERSON CLARENS: Correct.

1 MS. KRESS: So, basically, what we're  
2 requesting -- we would like to request of the applicant, if I  
3 ascertained all the information correctly earlier, is one set  
4 of drawings that we can label as an exhibit that --

5 CHAIRPERSON CLARENS: Has already been labeled  
6 exhibit, and it already has a label as an exhibit in the  
7 order.

8 MS. KRESS: That can -- that will come in, and  
9 we will accept into the record and given an exhibit number  
10 that combines these various exhibits to have one correct  
11 exhibit for us to be able to reference.

12 CHAIRPERSON CLARENS: That is correct. I think  
13 that if we can do that, I think we can move forward with this  
14 order.

15 So, those were the only comments from NCPC, is  
16 that correct?

17 MS. KRESS: Yes.

18 CHAIRPERSON CLARENS: The parapet and the  
19 signage.

20 MS. KRESS: No, the NCPC did not comment on the  
21 signage. They only commented on the parapet and change on the  
22 parapet. The signage was in response to the hearing -- I  
23 mean, the proposed action and the response by the applicant to  
24 --

25 CHAIRPERSON CLARENS: I see.

26 MS. KRESS: -- the Commission's concerns on

1 signage.

2 CHAIRPERSON CLARENS: Very good. Okay.

3 So, Commissioners, what is your pleasure?

4 COMMISSIONER HOOD: Mr. Chair, may I just say  
5 something before we move --

6 CHAIRPERSON CLARENS: Sure.

7 COMMISSIONER HOOD: When I voted on this at  
8 first, I was a little reluctant, and I still stand reluctant  
9 for the simple reason that this Commission, the Office of  
10 Planning and Office of Zoning, we need to define -- and I said  
11 this at the hearing and at the last proposed action -- we need  
12 to define when something becomes a modification and a new PUD,  
13 because this -- it could set a bad precedent.

14 And I don't know whether we need to petition  
15 staff to look into that and let's become a petition Zoning  
16 Commission or how we need to work out, but that does need to  
17 be done.

18 CHAIRPERSON CLARENS: Well, can we deal with  
19 that. I think that that was an issue that was discussed on  
20 the record. Maybe you might want to suggest a way in which we  
21 can deal with this issue of the -- and this might connect,  
22 then, to a correspondence that we have, which is part of our  
23 agenda. Is that correct?

24 COMMISSIONER HOOD: Yes, because that --

25 CHAIRPERSON CLARENS: We have a letter --

26 COMMISSIONER HOOD: A request for time

1 extension.

2 CHAIRPERSON CLARENS: No.

3 COMMISSIONER PARSONS: No, that's a separate  
4 issue.

5 I'd like to agree with Mr. Hood, because --

6 CHAIRPERSON CLARENS: Okay.

7 COMMISSIONER PARSONS: -- we have a sent a  
8 signal to the development community that we're willing to  
9 accept change of use from -- a total change of use as a  
10 modification of a PUD. And while I think most of us welcome  
11 this particular --

12 CHAIRPERSON CLARENS: Change of use.

13 COMMISSIONER PARSONS: -- change, I would hate  
14 for that to be a signal that this is the way we're going to do  
15 business on so many PUDs that are outstanding.

16 MS. KRESS: Perhaps, if you want some  
17 additional discussion, Mr. Bergstein could respond to the  
18 issue, if you care to discuss it today.

19 COMMISSIONER HOOD: Ms. Kress, I think what I'm  
20 saying is we either need to have the Office of Planning look  
21 into it so we can have that -- not a defined line but have  
22 some type of guidelines to when we know when it's a new PUD as  
23 opposed to a small modification or whatever modification.

24 We need to have something more definite that we  
25 can operate by as opposed to setting a precedent for everyone  
26 to come in and say this is a modification, not a new PUD. So,

1 I think that's something we need to research, investigate, and  
2 I'm not exactly sure where to point it, and that's, I guess,  
3 where I'm going -- Office of Planning, Office of Zoning,  
4 petition the Commission -- and I think we need to have an all  
5 out hearing on it.

6 MS. KRESS: And perhaps it should be a  
7 combination. We should ask Office of Planning for their  
8 advice, Office of Zoning as well as our Corporation Counsel to  
9 determine this more clearly for the future, and I believe  
10 that's your concern is that we need to perhaps articulate this  
11 better for future cases.

12 CHAIRPERSON CLARENS: Well, there are two  
13 issues, right? I mean, one is the issue of how it is that we  
14 proceed with this request for modification especially when use  
15 is changing, and the other one is this case in particular,  
16 1000 K Street and what is the status of that. I mean, we've  
17 approved an order. The order is for a modification of a PUD.  
18 And, so we need to deal with that modification of a PUD that  
19 obviously changes the use, and I understand the issues.

20 So, I don't know. Mr. Bergstein, do you have  
21 some comments on this issue?

22 MR. BERGSTEIN: It's a matter I've given some  
23 thought to, and I've actually written down something, but it's  
24 a very complex issue, and it's something that I would prefer  
25 you allow me to discuss with you in writing. But I'm at your  
26 pleasure to give you my thoughts publicly, as well, but it's

1 really your choice.

2 CHAIRPERSON CLARENS: Well, no, I'd rather give  
3 you time to develop this in writing and think it through.  
4 But, again, I want to separate the two issues. One is how the  
5 Commission should proceed in future cases establishing some  
6 guidelines for that, and the other one is how to proceed on  
7 this particular case that is in front of us, which we've  
8 already acted on and that is now before us for final action.

9 COMMISSIONER PARSONS: Well, I certainly didn't  
10 intend to impact this decision.

11 CHAIRPERSON CLARENS: Okay.

12 COMMISSIONER HOOD: I just wanted to bring it  
13 up, because that was -- I know that was a major concern, and I  
14 think that we needed to address it. Not dealing with this,  
15 but I thought this was the opportune time to bring that up.

16 COMMISSIONER PARSONS: Mr. Chairman, I would  
17 vote -- I would move that we approve the draft order, as  
18 written, with the exception or amendment to provide for the  
19 incoming exhibit that will indicate no parapet, no sign on New  
20 York Avenue, and --

21 CHAIRPERSON CLARENS: Well, a three-foot  
22 parapet. The size of the letters --

23 MS. KRESS: No, that was removed.

24 CHAIRPERSON CLARENS: That was removed.

25 MS. KRESS: The three-foot parapet was removed.

26 CHAIRPERSON CLARENS: Okay.

1 MS. KRESS: I'm sorry.

2 COMMISSIONER PARSONS: Maybe I shouldn't be so

3 specific.

4 MS. KRESS: Yes, I think, perhaps, we just say

5 regarding the parapet issue and the signage issue.

6 COMMISSIONER PARSONS: And the illumination

7 issue.

8 MS. KRESS: And the illumination issue, and

9 also there was something else that was discussed, and it has

10 to do with the extension, and I don't know whether you want to

11 handle that as a part of this motion.

12 COMMISSIONER PARSONS: No.

13 MS. KRESS: All right.

14 CHAIRPERSON CLARENS: I don't think so.

15 MS. KRESS: Because we were going to put it in

16 this order.

17 CHAIRPERSON CLARENS: Well, if we --

18 MS. KRESS: Why don't you handle this is a

19 vote, and then we'll come back to that extension.

20 CHAIRPERSON CLARENS: If we don't deal with it

21 in this order, where are we going to deal with it?

22 COMMISSIONER PARSONS: Well, I guess you're

23 right. We ought to deal with it now.

24 CHAIRPERSON CLARENS: If we don't deal with the

25 order -- with the extension, the issue of extension --

26 COMMISSIONER PARSONS: All right, I withdraw my

1 motion. Let's go to the next matter.

2 MS. KRESS: Oh, I was going to say to not  
3 withdraw. I was just going to add it -- well, whatever.

4 The proposal that has been discussed is that  
5 the extension of the PUD, which was later on the agenda, that  
6 the words be added as a part of the approval of this final  
7 action to say that the PUD is extended until October whatever  
8 date -- I believe it's about the 5th or 6th, year 2000 -- or  
9 until the order in VC blank becomes effective, whichever  
10 occurs first, the actual order number that this order would be  
11 given.

12 So, basically, we're extending the base PUD  
13 until October -- and I believe it's 5th or 6th year 2000.

14 CHAIRPERSON CLARENS: It's one year from the  
15 time of the expiration of the present PUD.

16 MS. KRESS: PUD.

17 CHAIRPERSON CLARENS: And, so it's one year  
18 from the time, and we're extending the present PUD order until  
19 then or until this PUD becomes effective.

20 MS. KRESS: Whichever occurs first.

21 CHAIRPERSON CLARENS: Whichever occurs first.

22 MS. KRESS: This is the wording that, as you  
23 discuss things, Mr. Bergstein drafted for you.

24 CHAIRPERSON CLARENS: Very good. So, would you  
25 consider that modification to your motion, Mr. Parsons, to  
26 include that in the order?



1 COMMISSIONER PARSONS: Yes, as one of the  
2 conditions at the end, I guess, yes.

3 CHAIRPERSON CLARENS: That is correct.

4 MS. KRESS: As a part of the decision.

5 COMMISSIONER PARSONS: That's where it will be  
6 located.

7 COMMISSIONER HOOD: Let me make sure I'm clear.  
8 What's happening, the initial PUD is going to expire, so  
9 they're asking for an extension until the modification kicks  
10 in.

11 CHAIRPERSON CLARENS: Well, this is separate  
12 from any request. We are clarifying our order so that we do  
13 not create a situation where a gap or the applicant is  
14 prejudiced by the process of adoption of an order of this  
15 Commission.

16 So, we have already approved the modification  
17 to the PUD, and there's going to be a process before that PUD  
18 becomes effective -- that modification becomes effective. So,  
19 we need to act, we need to clarify so that the original PUD,  
20 which would expire on October 5 or 6 --

21 COMMISSIONER PARSONS: Six.

22 CHAIRPERSON CLARENS: -- would have continuity  
23 until this modification takes effect.

24 COMMISSIONER HOOD: And then once the other  
25 modification takes effect, then they will have one year -- or  
26 two years. Three?

1 MR. BERGSTEIN: The PUD modification, as I  
2 understand it, is going to be extended for two years. The  
3 existing PUD, the Commission is going to permit it to remain  
4 in effect until either one year from its expiration date or  
5 until the effective date of the PUD modification, whichever  
6 occurs first.

7 So, the one year relates to a certain time  
8 limit so that if for reason the PUD modification never becomes  
9 effective, the existing PUD would end in one year, and then  
10 the applicant can come back and ask for a further extension of  
11 time, if necessary.

12 Otherwise, if the PUD modification does become  
13 effective prior to one year from the original PUD's expiration  
14 date, then, at that point, that original PUD would expire.

15 CHAIRPERSON CLARENS: Otherwise the new PUD  
16 modification would be valid for two years from the time that  
17 it becomes effective.

18 COMMISSIONER PARSONS: In effect, we're  
19 probably talking about a ten-day extension.

20 COMMISSIONER HOOD: And that's where I was  
21 going, because I had made a note for a month.

22 COMMISSIONER PARSONS: That's all this is.

23 COMMISSIONER HOOD: Okay.

24 COMMISSIONER PARSONS: Yes, this is all this  
25 is.

26 CHAIRPERSON CLARENS: That's all it is. It's

1 just simply so that there's no gap.

2 Very good. So, you've added that to your  
3 motion.

4 MS. KRESS: Let me just take back what I  
5 recommended. There is some concern that this might want to,  
6 if it goes to appeals or there's problems, that this might  
7 want to be handled in two motions so that it can be appealed  
8 independently rather than as a part of the same motion.

9 CHAIRPERSON CLARENS: Why would you do that?

10 MS. KRESS: It has just been pointed out to me  
11 that there may be -- and perhaps it is the very issue you're  
12 dealing with, I don't know; I did not have that communication.  
13 It was just that it should be separated and handled as two  
14 separate issues so that if there are problems or if it is  
15 appealed by anyone, as we know --

16 CHAIRPERSON CLARENS: This is a comment from  
17 Corporation Counsel or --

18 MS. KRESS: No.

19 CHAIRPERSON CLARENS: No? Corporation Counsel,  
20 any comments on that? Whether we should --

21 MR. BERGSTEIN: I have no feelings about it one  
22 way or another, but if you're going to do that, it would seem  
23 to me that, first, you would vote on the PUD modifications so  
24 that when you extend the existing PUD and relate it back to  
25 something, that something's already been voted on.

26 So, if we're going to do two motions, I would

1 do the PUD modifications first, approve that, and then do the  
2 extension of time on the existing PUD relating it back to that  
3 PUD that you just approved.

4 COMMISSIONER PARSONS: All right, then, I would  
5 move that we adopt draft order in case number -- or draft  
6 order number 905, as written, with the exception that a new  
7 exhibit will be entered into the record by the applicant  
8 reflecting the accurate drawings of the parapet, the  
9 illuminate or lack thereof in the penthouse --

10 CHAIRPERSON CLARENS: And no signage.

11 COMMISSIONER PARSONS: -- and the no sign on  
12 New York Avenue.

13 CHAIRPERSON CLARENS: As well as the size of  
14 the signage, the correct size of the signage.

15 MS. KRESS: All of the signage.

16 CHAIRPERSON CLARENS: All of the signage.  
17 There's a discrepancies between two of the exhibits.

18 COMMISSIONER PARSONS: Oh, I'm sorry, it's 24  
19 inches is --

20 MS. KRESS: Yes.

21 CHAIRPERSON CLARENS: Correct. Okay, you're  
22 seconding?

23 COMMISSIONER HOOD: If you want me to second  
24 it, Mr. Chairman, I'll second it with great hesitation.

25 (Laughter.)

26 CHAIRPERSON CLARENS: Okay, but that's a

1 second.

2 So, having been moved and seconded, all in  
3 favor signify by saying aye.

4 (Chorus of ayes.)

5 Opposed?

6 (No response.)

7 The ayes have it, and so that's an order.

8 MS. KRESS: I would just, for the record, say  
9 that Commissioner Franklin left his vote, and it is  
10 affirmative.

11 CHAIRPERSON CLARENS: Very good. Okay.

12 And then the second motion, Mr. Parsons.

13 MR. ERANDU: Can you hold, please? Staff  
14 record the vote four to zero -- Commissioner Parsons, Hood,  
15 Clarens, and Commissioner Franklin by proxy. Thank you.

16 COMMISSIONER PARSONS: Well, with reference to  
17 the request of Wilkes, Artis, Hedrick and Lane of August 10  
18 concerning the need for the PUD at 1000 K Street that  
19 preexisted the case we just dealt with, I would move that we  
20 -- are we going to do this is a separate order or in addition  
21 to the PUD we just passed?

22 MS. KRESS: We can do it either way.

23 CHAIRPERSON CLARENS: Well, it has to be  
24 incorporated. I don't see how we can do any other place  
25 except as part of the order that we approving. So, that's why  
26 I didn't -- I thought that it should have been made part of

1 the original approval, but we can incorporate it as a  
2 modification. We can move --

3 MS. KRESS: That's what Mr. Bergstein was  
4 suggesting, I believe. I don't want to put words in his  
5 mouth.

6 MR. BERGSTEIN: Maybe I'm losing track of  
7 what's going on. Was there a separate request made under the  
8 original PUD?

9 MS. KRESS: Yes.

10 MR. BERGSTEIN: And, so that order would come  
11 under the original PUD. I mean, you're going to have -- you  
12 have one order granting an application, which I assume is 99-  
13 2M, and then you would have --

14 CHAIRPERSON CLARENS: Very good, Mr. Bergstein.  
15 I understand you. So, what you're saying is that we can --  
16 that we have a request, and we could do it as a modification  
17 --

18 MR. BERGSTEIN: As a separate order under that  
19 original PUD extending that order.

20 CHAIRPERSON CLARENS: Well, but except that it  
21 is not -- there's not two PUDs; it is the same, and what we're  
22 doing is a modification.

23 MR. BERGSTEIN: But you're granting an  
24 extension of the original PUD. You have a separate  
25 proceeding, which is a PUD modification, that you're also  
26 granting. But it would be appropriate to do two orders, one

1 order, the extension under the original PUD's proceeding  
2 number, I'd assume, and then -- because I assume that when  
3 extensions for PUDs are made, they're made under the original  
4 PUD proceeding number.

5 CHAIRPERSON CLARENS: If we do that, then do we  
6 need to then go through the process of having a separate order  
7 written, and then that would be a new action that this  
8 Commission is taking?

9 MR. BERGSTEIN: Well, if you're taking two  
10 votes --

11 MS. KRESS: It would be two orders, but it's a  
12 pretty simple -- I mean, as you know, when we do the time  
13 extensions, those are fairly simply, straightforward orders.

14 COMMISSIONER PARSONS: They don't need to be  
15 referred to the Planning Commission, do they?

16 MS. KRESS: No, they really don't.

17 MR. BERGSTEIN: It's a request for application  
18 for an extension of time on a --

19 MS. KRESS: Typically, we do, because -- in  
20 this case, we don't need to, because we have the Office of  
21 Planning's report current and updated on this particular site.  
22 Sometimes when we have requests for extensions that are a  
23 couple of years old, comprehensive plans have changed, et  
24 cetera, et cetera, so we have often -- well, we do, we refer  
25 it to OP.

26 In this case, we don't need to, since OP

1 essentially has already commented on the project as a part of  
2 the modification. I think we could be prepared, if you so  
3 desire.

4 CHAIRPERSON CLARENS: Okay, well, correct me if  
5 I'm wrong. The request from the applicant is that we maintain  
6 the two PUDs in effect until the market conditions are --

7 COMMISSIONER PARSONS: Yes, that's true.

8 CHAIRPERSON CLARENS: That's what they're  
9 requesting? That's what we're saying that we are not  
10 approving?

11 COMMISSIONER PARSONS: That's correct.

12 CHAIRPERSON CLARENS: Okay. Well, then we need  
13 to -- so, what we're approving is an extension of the original  
14 form of the PUD for a year after the expiration date of that  
15 PUD or until the new modified PUD comes into effect.

16 COMMISSIONER PARSONS: Correct.

17 MR. BERGSTEIN: Whichever occurs first.

18 CHAIRPERSON CLARENS: Whichever occurs first.

19 Okay, and that was a motion that you made. Is  
20 that correct, Mr. Parsons?

21 COMMISSIONER PARSONS: Yes. And I'm playing  
22 lawyer here, which is very dangerous for me, but it seems to  
23 me that the train of orders that we're amending is the 556  
24 series, 556-B, C, D, and E. 556-E extended this till October  
25 6, 1999.

26 CHAIRPERSON CLARENS: Correct.



1 COMMISSIONER PARSONS: So, we would be amending  
2 that order to extend through October 6, year 2000 or until  
3 order 905, just adopted, is effective, whichever is first.

4 CHAIRPERSON CLARENS: That is correct.

5 COMMISSIONER PARSONS: And that would be my  
6 motion -- or whichever occurs first.

7 MS. KRESS: Exactly.

8 CHAIRPERSON CLARENS: That is exactly correct.  
9 Very good.

10 And, Mr. Hood --

11 COMMISSIONER HOOD: How long do we anticipate  
12 the first action that we took to take?

13 MS. KRESS: I think it depends on the appeal.  
14 As we know, and we have received in writing, I think the  
15 concern is -- I mean, really, it's only like 13 days from the  
16 time that we pass it and we're basically done except for the  
17 appeals --

18 COMMISSIONER HOOD: The appeals process.

19 MS. KRESS: -- process.

20 CHAIRPERSON CLARENS: But the appeals process  
21 is separate, and we'll toll the time independently. Is that  
22 correct?

23 MS. KRESS: Yes, it will toll the time, but he  
24 was saying actually how much time, and I'm saying, really, it  
25 could be just ten, 13, 15 days or it could be longer, if there  
26 is an appeal. It will be tolled, but it could be longer.

1 COMMISSIONER HOOD: What scares me is that I'm  
2 looking at this, and I'm anticipating a longer version,  
3 knowing how these things usually work, and I see them tying up  
4 things for four and five years, excluding the appeal process.  
5 But that's something that's --

6 MS. KRESS: Excluding the appeals process?

7 CHAIRPERSON CLARENS: No, excluding the appeal  
8 process should not -- no, excluding the appeal process, is  
9 just simply a matter of publication of the final order in the  
10 D.C. Registry, and that should happen within a limited amount  
11 of time, which we are saying is going to be between ten and 15  
12 days after the time of expiration of 556-E, which is the last  
13 order that was approved by this Commission.

14 COMMISSIONER HOOD: Well, with that, not to  
15 belabor the point out, second the motion of Mr. Parsons,  
16 whichever comes first.

17 CHAIRPERSON CLARENS: Very good. I hear a  
18 second. So, it's been properly moved and seconded.

19 All in favor of that motion signify by saying  
20 aye.

21 (Chorus of ayes.)

22 Opposed?

23 (No response.)

24 The motion carries.

25 MS. KRESS: Would you record the vote?

26 MR. ERANDU: Staff -- did Mr. Franklin vote?

1 MS. KRESS: Yes. And I'm sorry, Mr. Franklin  
2 voted in favor.

3 MR. ERANDU: Okay, staff records the vote four  
4 to zero to approve to extend the order number 556 series by a  
5 vote of four to zero -- Mr. Parsons, Mr. Hood, Mr. Clarens,  
6 and Mr. Franklin by proxy. Thank you.

7 MS. KRESS: Thank you.

8 CHAIRPERSON CLARENS: Very good. By the way,  
9 just so that we can keep up with it, that is actually taking  
10 care of item 10-A of the agenda.

11 MS. KRESS: Yes, thank you.

12 CHAIRPERSON CLARENS: Okay. Now, we move on to  
13 99-1C. That's the Fort Lincoln Housing project that we've  
14 approved, and it's coming back to us for final action.

15 COMMISSIONER PARSONS: Point out, Mr. Chairman,  
16 I did not participate in this case but will sit here so you  
17 can have a quorum.

18 CHAIRPERSON CLARENS: Very good. And we have a  
19 proxy from Mr. Franklin, is that correct?

20 MS. KRESS: Yes, we do.

21 COMMISSIONER HOOD: Mr. Chair, I would move --  
22 I believe they've submitted everything we've asked for. I  
23 would move in favor of 99-1C.

24 CHAIRPERSON CLARENS: I second that motion.

25 All in favor signify by saying aye.

26 (Chorus of ayes.)

1 Do we have a positive vote from Mr. Franklin?

2 MS. KRESS: Yes, we do, in favor.

3 CHAIRPERSON CLARENS: Very good. So, that

4 motion carries, and the order is approved.

5 MR. ERANDU: Staff records the vote as three to

6 zero to approve the Fort Lincoln PUD -- Commissioner Hood,

7 Clarens, and Commissioner Franklin by proxy. Thank you.

8 CHAIRPERSON CLARENS: Very good.

9 MS. KRESS: And the order did incorporate all

10 of the concerns that -- when it was passed proposed action,

11 they all have been incorporated except for a few typos, which

12 I will pick up.

13 CHAIRPERSON CLARENS: And NCPC had no --

14 MS. KRESS: And NCPC had no --

15 CHAIRPERSON CLARENS: -- comments.

16 MS. KRESS: Exactly.

17 CHAIRPERSON CLARENS: Very good. The next item

18 is the update of Child Development Center, and that was an

19 order that has been already approved, and it was in some of

20 the minutes as being postponed. Action was postponed pending

21 final comments from a number of agencies, and we've received

22 the majority of them.

23 MS. KRESS: Yes. According to the Office of

24 Planning report, we have received them from everyone except

25 Barbara Camara, and I don't know -- the report mentioned that

26 --

1 MR. COLBY: You received that one today.

2 MS. KRESS: Oh, you did?

3 MR. COLBY: I gave Mr. Bastida ten copies.

4 CHAIRPERSON CLARENS: And do we have -- and do  
5 we need to also waive the rules to accept or is that a timely  
6 --

7 MR. COLBY: No, it was referenced in our report  
8 to say that we would --

9 CHAIRPERSON CLARENS: Well, was your report  
10 timely or do we need to waive --

11 MR. COLBY: The original report was timely.  
12 Today's, of course, is not.

13 CHAIRPERSON CLARENS: Okay.

14 MS. KRESS: We have not received that letter.  
15 Can you just, perhaps, highlight it for us. Staff is going to  
16 look -- we've received so many papers today, we've had trouble  
17 keeping track. Perhaps you can brief the Commission?

18 MR. COLBY: Sure. Yes, if you like, I can give  
19 the comments contained in both our report, which I can  
20 summarize very quickly to say that there were really no  
21 changes in the materials that you received prior to today that  
22 effect the recommendation that we made previously.

23 But today's, I think, is substantive. It comes  
24 from the Office of Early Childhood Development, from Barbara  
25 Camara, and there were suggestions from them, about three  
26 suggestions. One was -- and some of which met suggestions

1 this Commission had made earlier.

2 First, that the D.C. Office on Aging be an  
3 organization to which the Board submits the application for  
4 review, and we agreed with that, and the language would state  
5 now, if the Commission adopts that, "Before taking final  
6 action on an application for use as a child development and/or  
7 elderly day care center, the Board shall submit the  
8 application to the D.C. Departments of Public Works and  
9 Health."

10 And the new language would be the "D.C. Office  
11 on Aging and the D.C. Office of Planning," and I've added "as  
12 appropriate," because you wouldn't send it to the Office on  
13 Aging if it were a child development center and vice versa.

14 CHAIRPERSON CLARENS: Sure.

15 MR. COLBY: So, we agreed that the Office on  
16 Aging should be in that loop and provide comments to the  
17 Commission.

18 Secondly --

19 MS. KRESS: What page is that on in the -- oh,  
20 you're just -- you don't know which page it is on in the  
21 draft.

22 CHAIRPERSON CLARENS: No, no, no. These are  
23 the new comments.

24 MS. KRESS: I was trying to equate this to the  
25 actual Zoning Commission order, which I --

26 MR. COLBY: I'm sorry.

1 MS. KRESS: If you could just hold a second so  
2 we --

3 MR. COLBY: The first one was 205.9.

4 MS. KRESS: Okay. Right now, on 205.9, we're  
5 only changing by deleting a word and adding a word. So, this  
6 would have to be rewritten.

7 MR. COLBY: Okay. It's a very minor --

8 MS. KRESS: I understand the point.

9 MR. COLBY: It's a very minor change, though.  
10 Then 330.5, that Office suggested that child  
11 development -- and this is paragraph D.

12 MS. KRESS: That's 330.5-D?

13 MR. COLBY: Yes.

14 MS. KRESS: Okay.

15 MR. COLBY: That child development and/or  
16 elderly day care center be permitted provided that the center  
17 shall be limited to no more than -- currently, it reads 15,  
18 the regulations do. They would have said -- they would say 40  
19 individuals, a substantial increase.

20 The rationale given by that Office is the need  
21 for an additional 4,500 child care slots, a; b, that it is not  
22 generally cost effective to provide services for only 15  
23 children, and, c, that infants can only be organized in groups  
24 of eight and preschool children in groups of 16. So,  
25 apparently, there is a system that they utilize that works in  
26 multiples of eight.

1                   And our response is that we believe, although  
2           the Corp Council can comment on that, that the number 15 could  
3           be changed to 16 generally within the scope of the case and  
4           get to a multiple of eight but not to 40. The maximum of 40,  
5           while it might be a good industry standard for the reasons  
6           given, it is way beyond the nature of what we have addressed  
7           to date, and probably would have potential impacts that go --  
8           that the Board should continue to address as it does now when  
9           you go above 15.

10                   Sixteen is a marginal number. If it works  
11           better for licensing, I would think it would make little  
12           difference in terms of impact, but 40 is quite a different  
13           number, and we've not heard any testimony on that.

14                   MS. KRESS: As you know, earlier when we were  
15           discussing this conversations that happen with changes of  
16           numbers, I don't know -- and, unfortunately, we have not been  
17           able to locate those -- the letter. I don't know how the  
18           Commission feels in its comfortableness about dealing with  
19           this.

20                   You had one more point you said you needed to  
21           make?

22                   MR. COLBY: Yes. Finally, the Office of Early  
23           Childhood Development suggested that in the definitions, that  
24           the phrase limiting the length of time which currently reads,  
25           "for infants and children away from home for less than 24  
26           hours," be replaced with, as the Commission had requested,



1 "shall not reside at the facility."

2 That allows, on an emergency basis, someone to  
3 stay over 24 hours if need be, but they cannot reside there,  
4 and it gets around the issue of size of family, basically,  
5 which is the real reason that 24 hours is there.

6 These children cannot be residents. They can  
7 only be there as day care. The day might, under any given  
8 unfortunate or unusual circumstance extend past 24 hours, and,  
9 if so, this would provide that.

10 That language was suggested by Commissioner  
11 Franklin previously. We sent that out to the agencies as a  
12 what if, what do you think of this, and the only response  
13 we've gotten was one of agreement that they would change the  
14 definition in licensing to reflect that language.

15 MS. KRESS: But now it's being proposed  
16 differently.

17 MR. COLBY: No, it's being proposed as -- no.  
18 They would reflect this new change suggested by Commission  
19 Franklin to resolve another issue to simplify it and not talk  
20 about 24 hours but just to say "shall not reside at the  
21 facility."

22 CHAIRPERSON CLARENS: Which I think is a -- it  
23 makes sense.

24 Now, let me -- this is a -- the text amendments  
25 deal mostly with the definition of a child/elderly development  
26 center and the elderly day care home? Is that correct?

1 MR. COLBY: I'm sorry, which one?

2 CHAIRPERSON CLARENS: This modification in  
3 front of us is mostly about the definitions.

4 MR. COLBY: Yes, it's strictly definitions.

5 CHAIRPERSON CLARENS: And that in the majority  
6 of cases these facilities will be subject to BZA approval as a  
7 special exception?

8 MR. COLBY: Above the -- in an R-4 zone, above  
9 the limit of 15 or 16, depending upon how the Commission comes  
10 out on that proposal, they are special exception approvals by  
11 the Board.

12 CHAIRPERSON CLARENS: So, your recommendation  
13 is that we change 15 to 16 in order to comply with the  
14 rationale given by --

15 MR. COLBY: Yes, I think it's -- I would think  
16 they could work just as well with 15, but I think that the  
17 change is so minor that why not get in sync with their system?

18 CHAIRPERSON CLARENS: But that it would take a  
19 significant additional hearings to then move it to 40? That  
20 that's enough of a --

21 MR. COLBY: I would think so, yes.

22 MR. BERGSTEIN: I'll concur with Mr. Colby on  
23 that.

24 CHAIRPERSON CLARENS: Yes, okay. Well, I don't  
25 have a problem going from 15 to 16, and I don't have a problem  
26 with the idea of going from this whole issue of 24 hours and

1 23 hours and all that kind of stuff to the just defining it as  
2 they will not be a resident in the facility.

3 Anything else?

4 MR. COLBY: That's it from the Office of  
5 Planning. That's all from the agencies.

6 CHAIRPERSON CLARENS: Okay. Is this something  
7 that we can act on and have staff modify the order accordingly  
8 or -- I mean, this is final action -- or do we --

9 MS. KRESS: Yes, I believe so. This is final  
10 action, but this was just -- this is why I believe the  
11 Commission has held off some four months on this -- was to get  
12 this information. And I think that the changes proposed here  
13 are within the context of what has been advertised and are  
14 very minor unless one was to go to the 40.

15 CHAIRPERSON CLARENS: I have only one question,  
16 and that is with the original order, and that in reading it  
17 again, I read that the definition of child and elderly  
18 development center encompasses before and after school  
19 programs, known as child care centers -- preschool, nursery  
20 school -- no, I'm sorry, includes before and after school  
21 programs.

22 And my question is if we are defining a child  
23 and elderly development center and then before and after  
24 school programs, does that mean the school needs to apply for  
25 -- a school that comes in a residential district that comes in  
26 for a special exception as a school needs to apply for a

1 separate special exception to run a before and after school  
2 program?

3 Mr. Colby?

4 MR. COLBY: Of course that definition exists  
5 now, and I'm not sure I can -- I can or want to try to answer  
6 that, not having looked at it. I mean, I think that -- I  
7 don't know. The definition was just trying to make sure that  
8 the programs that people call by different names -- child  
9 development centers, in some cases, or the old-fashioned term  
10 would be a nursery school -- and to make sure that they're all  
11 covered by the same regulation.

12 CHAIRPERSON CLARENS: Is it necessary to say,  
13 perhaps, or add a phrase -- and I don't know if it's too late  
14 to do this -- but to add a phrase that is "before and after  
15 school programs which are run independent of approved  
16 schools?"

17 The idea is to clarify so that if you are  
18 approving a school, you don't have to add a special exception  
19 for a before and after school programs, which a lot of schools  
20 have in association with their normal school activities.

21 And I'm not sure that it needs to be made an  
22 independent burden on applicants to have to come in with an  
23 additional expense of procedures of saying, "Well, we are  
24 going to run a before and after school program, and we need a  
25 special exception for that." Or maybe it is good to have  
26 that, I don't know. I raise it as an issue.

1 MS. KRESS: Well, I certainly think that that  
2 is only further defining something that was already intended.  
3 My only question would be of Mr. Bergstein if he thinks that  
4 we need to do that to alleviate the Chair's concern about  
5 special exception?

6 MR. BERGSTEIN: In other words, it's your  
7 intent that this definition and the use only encompass these  
8 type of activities, which are really independent of anything  
9 else, as opposed to being --

10 CHAIRPERSON CLARENS: Well, I mean,  
11 particularly, I don't know about anything else. I think that  
12 it is the before and after school program, because that is,  
13 intrinsically, by its wording, associated with a school  
14 program.

15 So, if you are approving a school program as a  
16 special exception in a residential district, then the school  
17 program might or might not have a before and after school  
18 program associated with it. So, when it comes for the special  
19 exception as a school, then included in that should be this  
20 program, and this only should be for those before and after  
21 schools programs -- and we've seen some in BZA -- that come to  
22 us as separate items, not necessarily located in a school  
23 building or school grounds. So, that's -- and for which I  
24 think we should have then.

25 So, that's why I want to add the phrase "before  
26 and after school programs," and make it only part of that and

1 not the nursery school and all the other things but the before  
2 and school after programs which are not associated with school  
3 functions or school use or something to that effect.

4 MS. KRESS: Your original words, which were  
5 "which are run independent of a school."

6 CHAIRPERSON CLARENS: That's right.

7 MS. KRESS: That's what I had written down.

8 CHAIRPERSON CLARENS: And that's what I said, I  
9 guess, which I think is better even than what I said now.

10 MR. BERGSTEIN: Well, it's always better to  
11 clarify, and it certainly comes within the original intent, so  
12 that I think that it is clarifying language. And to the  
13 extent that you would feel more comfortable with it, it's  
14 certainly appropriate to add it at this time.

15 It could also be added in the order itself as  
16 an interpretive guidance, but it would fit in there just as  
17 easily and certainly make the matter clearer and give you  
18 greater comfort. There's no reason why you cannot do it in  
19 terms of it being part of the final rule. I would think it's  
20 something that would require a new comment period to just  
21 clarify what your intent always was.

22 CHAIRPERSON CLARENS: Okay, any further  
23 comment? Mr. Colby?

24 MR. COLBY: No, that's all.

25 CHAIRPERSON CLARENS: Okay. And Commissioners,  
26 how do you feel about that?

1 COMMISSIONER PARSONS: Fine.

2 CHAIRPERSON CLARENS: Okay. So, with that in

3 mind, was there a motion to approve this?

4 COMMISSIONER PARSONS: So moved.

5 COMMISSIONER HOOD: Second.

6 CHAIRPERSON CLARENS: All in favor with

7 revisions, aye.

8 (Chorus of ayes.)

9 Opposed?

10 (No response.)

11 MS. KRESS: And Commissioner Franklin left a

12 affirmative vote, as well.

13 CHAIRPERSON CLARENS: Yes. This is good. This

14 is a step in the right direction to --

15 MS. KRESS: Would you record the vote, please?

16 MR. ERANDU: Staff records the vote four to

17 zero to approve Zoning Commission order number 907 in case

18 number 98-8 with Commissioner Parsons making the motion,

19 Commissioner Hood seconding it, Commissioner Clarens, and

20 Commissioner Franklin by proxy. Thank you.

21 CHAIRPERSON CLARENS: Okay. Now, we come to

22 the next case is item I, 98-14C. That's the PUD and Map

23 Amendment to 1000 16th Street, N.W.

24 MS. KRESS: I would just point out that, in

25 addition, NCPC has now reviewed it and has given its approval

26 with revised plans. The revised plans basically set the

1 penthouse back along the alley, for your information.

2 CHAIRPERSON CLARENS: And sets it back how

3 much?

4 COMMISSIONER PARSONS: Fifteen feet, four

5 inches.

6 CHAIRPERSON CLARENS: Along the alley?

7 MS. KRESS: Yes.

8 COMMISSIONER PARSONS: Shown on sheet A-6 and

9 A-7.

10 CHAIRPERSON CLARENS: Okay. What is your

11 pleasure, Commissioners?

12 We have an order that is before us that was

13 approved by this Commission.

14 MR. BERGSTEIN: You need a motion but not from

15 me.

16 CHAIRPERSON CLARENS: Well, I would move

17 approval of this order, and I would require a second.

18 Hearing none, the motion dies for lack of

19 seconding.

20 MS. KRESS: I have a proxy. I didn't know if

21 that counted as a second.

22 CHAIRPERSON CLARENS: No, we need somebody to

23 second the motion.

24 MS. KRESS: I don't believe I can Commissioner

25 Franklin's proxy as a second.

26 CHAIRPERSON CLARENS: Okay. Well, assuming



1       that we have a -- we have a proxy in favor of this motion, so  
2       we will take that as a second to the motion, if we have  
3       already a vote. We have a motion and a second.

4               All in favor signify by saying aye.

5               Aye.

6               MS. KRESS: The proxy says aye.

7               CHAIRPERSON CLARENS: Opposed?

8               COMMISSIONER PARSONS: No.

9               COMMISSIONER HOOD: Opposed.

10              CHAIRPERSON CLARENS: Okay, the motion dies for  
11      lack of a majority.

12              MS. KRESS: Would you please record the vote?

13              COMMISSIONER HOOD: Before the vote is  
14      recorded, I question the seconding being a proxy vote. I  
15      think we need to check the parliamentary procedures before we  
16      act on that. I'm not trying to be difficult, but, I mean, for  
17      on down the line. We don't want to have a second on a proxy.

18              MS. KRESS: Okay, could we, perhaps, ask our  
19      Corporation Counsel?

20              MR. BERGSTEIN: I don't have Roberts Rules of  
21      Order.

22              MS. KRESS: I don't have it with me right now  
23      either.

24              MR. BERGSTEIN: So, I apologize, but I don't  
25      have that.

26              COMMISSIONER PARSONS: Well, maybe we could

1 take this action as a tentative matter, because I agree with  
2 Mr. Hood that there's no sense, after all this, making a  
3 mistake procedurally --

4 CHAIRPERSON CLARENS: That's correct.

5 COMMISSIONER PARSONS: -- and we could do it  
6 next month or we're having a hearing on it on the 30th.

7 CHAIRPERSON CLARENS: That is correct. So,  
8 what I'm going to do -- what we're going to do, because one  
9 leg of the Commission is missing, and also there's going to be  
10 some action, perhaps, taking place before next meeting that  
11 will affect the composition of this Commission, that we  
12 postpone action on this case, then, until the October meeting.  
13 And at that point, the Commission can take up this issue  
14 again. We obviously don't have a majority to pass the order.

15 COMMISSIONER PARSONS: So, in lieu of taking  
16 the action we were about to take, you'd like to postpone the  
17 whole thing.

18 CHAIRPERSON CLARENS: That is correct.

19 MS. KRESS: If you do that, I think you should  
20 call a vote on that, then.

21 CHAIRPERSON CLARENS: Well, let's have  
22 discussion of that.

23 COMMISSIONER HOOD: When I said the second, I  
24 just wanted to make sure we were in line with Roberts Rules of  
25 Order. Personally, I would like to resolve it now, but if we  
26 have no way, then --

1                   CHAIRPERSON CLARENS: We have to err on the  
2 side of prudence. If you feel uncomfortable about accepting  
3 Mr. Franklin's proxy as a second to my motion, then my motion  
4 dies. If it dies, unless I hear another motion, I would then  
5 would like to postpone the decision on this case until our  
6 next meeting in October.

7                   COMMISSIONER HOOD: Well, on the other hand,  
8 tentatively, can we proceed with the proceedings, and then if  
9 we find out from Corp Counsel that that is not correct, then  
10 we would maybe put a motion to postpone it, like you said.  
11 I'm just trying to move the process.

12                  CHAIRPERSON CLARENS: Well, we're moving the  
13 process.

14                  COMMISSIONER HOOD: Right, but I just wanted to  
15 make sure that the second -- and that we need to check on this  
16 -- that you can second a motion by proxy.

17                  CHAIRPERSON CLARENS: There's no substantive  
18 differences between one and the other. In one case, a motion  
19 has been made; either it is seconded or it's not. If it is  
20 seconded, the motion fails. In this case, basically, we are  
21 postponing the decision to the next hearing.

22                  If it fails, then we still have an order that  
23 has been approved that the Commission needs to deal one way or  
24 another with it.

25                  COMMISSIONER PARSONS: All right.

26                  CHAIRPERSON CLARENS: So, we cannot -- we need

1 to -- a majority of this Commission needs to deal with this  
2 order, and either deny it on final action or approve it on  
3 final action. It cannot be left in limbo.

4 So, it seems to me that we do not have a  
5 majority on either side of this case to either deny it or to  
6 approve it.

7 COMMISSIONER PARSONS: That's correct.

8 CHAIRPERSON CLARENS: And so --

9 COMMISSIONER PARSONS: The public doesn't know  
10 that until we vote, but, apparently, from the discussions  
11 here, that's going to be a two to two vote.

12 CHAIRPERSON CLARENS: Well, the public doesn't  
13 know -- the public does know, because we just voted on it, and  
14 we didn't have a -- I called it, and we had a vote.

15 So, it seems to me that we can retract that  
16 vote and postpone.

17 COMMISSIONER HOOD: Mr. Chair, we've had one  
18 side of the vote. Now, we haven't had anyone call to deny our  
19 final action.

20 MR. ERANDU: Excuse me, Mr. Chairman, if I may  
21 add this. For the ten years I've been on this Commission, I  
22 have never seen any motion be seconded with a proxy, and if  
23 you vote now, the result is going to be, either way, two, two.

24 I think the best thing is what the Chairman  
25 said is to postpone this case until next month where you have  
26 a majority of the commissioners sitting.

1 CHAIRPERSON CLARENS: I agree. I think that  
2 the idea of seconding the motion with a proxy, especially in  
3 view of the facts that we don't have a majority to approve, I  
4 think that it's going into a direction. So, I would move to  
5 retract the prior motion and the prior vote. So, I'm taking  
6 that off the table. Is that something that all the  
7 commissioners are in favor of?

8 COMMISSIONER PARSONS: I see no option.

9 CHAIRPERSON CLARENS: Okay. And that,  
10 therefore, we're postponing action on this case for the  
11 October meeting.

12 MS. KRESS: Well, one could go ahead and have  
13 another motion, if --

14 CHAIRPERSON CLARENS: Yes, we could entertain  
15 another motion. Is there another motion on this case?

16 COMMISSIONER HOOD: I make a motion that we  
17 deny case number 98-14C.

18 COMMISSIONER PARSONS: I'll second that motion.

19 CHAIRPERSON CLARENS: Very good. Okay. It's  
20 been properly moved and seconded.

21 All in favor signify by saying aye.

22 COMMISSIONER PARSONS: Aye.

23 COMMISSIONER HOOD: Aye.

24 CHAIRPERSON CLARENS: Opposed?

25 Aye.

26 MS. KRESS: Commissioner Franklin is also

1       opposed.

2                   CHAIRPERSON CLARENS:   So, the motion fails for  
3       lack of a majority.   So, we're back to where we started.

4                   MS. KRESS:   But this one we know is legal.

5                   CHAIRPERSON CLARENS:   Okay, that's right.   This  
6       motion was appropriate.

7                   So, therefore, we cannot take an action on this  
8       case, and we are postponing the decision until October.

9                   COMMISSIONER HOOD:   But didn't we just take  
10      action?   We just took action on this case.

11                  COMMISSIONER PARSONS:   We took action, but it  
12      was a tie, so it resulted in nothing.

13                  COMMISSIONER HOOD:   So, what difference is  
14      going to make if -- okay, never mind.   Let's move on.   I don't  
15      understand.   I thought we took --

16                  COMMISSIONER PARSONS:   We took an action, but  
17      it would appear as though the only way we can resolve this is  
18      to wait a new appointment to the Chair beside me or another  
19      member of this Commission to read the record and participate  
20      in this case.

21                  COMMISSIONER HOOD:   And we're sure that's going  
22      to happen by next month?

23                  COMMISSIONER PARSONS:   No.

24                  MS. KRESS:   No.

25                  CHAIRPERSON CLARENS:   Well, no.   And then maybe  
26      next month we need to postpone again.

1 COMMISSIONER HOOD: Oh, okay, I see. I follow  
2 you now. Thank you.

3 CHAIRPERSON CLARENS: Basically, in essence,  
4 the Commission is deadlocked on this issue, and it's going to  
5 be pending appointment of new commissioners that a new  
6 decision will be able to be made. Very good, okay.

7 Next item is the 98-21C, Hoffman Wisconsin  
8 Avenue case.

9 COMMISSIONER PARSONS: Mr. Chairman, I move we  
10 approve this order number 904, as written.

11 COMMISSIONER HOOD: Second.

12 CHAIRPERSON CLARENS: It's been properly moved  
13 and seconded.

14 All in favor signify by saying aye.

15 (Chorus of ayes.)

16 Opposed?

17 (No response.)

18 None. We have a vote in favor of this -- vote  
19 of Commissioner Franklin.

20 MS. KRESS: And Commissioner Franklin voted in  
21 support.

22 MR. ERANDU: Okay. Staff records the vote as  
23 four to zero to adopt the Commission order number 904, in case  
24 number 98-21. Motion moved by Commissioner Parsons, seconded  
25 by Commissioner Hood. Thank you. And, I'm sorry,  
26 Commissioner Franklin adopting by proxy.

1 CHAIRPERSON CLARENS: The next item on the  
2 agenda is the 8th Street Overlay.

3 MS. KRESS: I need to clarify. Remember the  
4 minutes were incorrect, and we actually need someone to read  
5 the record, because Commissioner Parsons was recorded as  
6 having voted on the 8th Street Overlay, and in fact he did  
7 not. And, so, right now, only Commissioners Hood and you, Mr.  
8 Chair, are here to vote on this case.

9 So, the 8th Street Overlay needs to be read by  
10 either Commissioner Parsons and/or Commissioner Franklin.

11 COMMISSIONER PARSONS: Mr. Chairman, I would be  
12 happy to do that, and knowing that there's some urgency -- I  
13 think there's urgency; maybe that's too abrupt a term -- but I  
14 know the community is anxious to get on with the development  
15 in this area. I'd be glad to do that and would suggest that  
16 maybe we take this up just prior to our hearing on the 30th of  
17 September as an action item special meeting.

18 CHAIRPERSON CLARENS: Well, I know that there's  
19 an urgency. I don't see a difference between taking the  
20 decision on the 30th and then taking it on the 12th of  
21 October, which is only, you know -- so, if we can postpone it  
22 to our next hearing -- meeting date, which is I think the  
23 12th. Is that correct?

24 COMMISSIONER PARSONS: I think it's the 18th.

25 MS. KRESS: I don't have the schedule with me.  
26 Oh, wait a minute, it's right in front of us. Excuse me, it



1 is the 18th. It's right in front of us.

2 CHAIRPERSON CLARENS: Oh, it is the 18th. So,

3 you want to move it --

4 MS. KRESS: Well, and -- so, that might be

5 late. So, I think we can, if they're willing, I believe --

6 CHAIRPERSON CLARENS: It's a fairly simple

7 action.

8 MS. KRESS: You all are prepared, and so it's

9 Commissioner Franklin and Commissioner Parsons, and if we can

10 get those packages out. Which case is that?

11 CHAIRPERSON CLARENS: Yes. Okay. So, we'll --

12 MS. KRESS: Would you please get the packages

13 out?

14 COMMISSIONER PARSONS: Just one to me.

15 MS. KRESS: No, and -- well, Commissioner

16 Franklin said that he would be interested in reading the

17 record, as well.

18 CHAIRPERSON CLARENS: Very good. Okay. So,

19 then we will postpone this to September 30th in a special

20 meeting to be held immediately prior to our hearing on that

21 date.

22 COMMISSIONER PARSONS: 6:30?

23 MS. KRESS: What do you think, 6:30?

24 CHAIRPERSON CLARENS: 6:30.

25 MS. KRESS: 6:30, okay.

26 CHAIRPERSON CLARENS: We should be able to

1 resolve this within a few minutes.

2 COMMISSIONER HOOD: And, also, may I add since  
3 we're on that subject, could we also resolve 96-12Z? That was  
4 the one earlier, the Comprehensive Plan Overlays. I think  
5 that would be relative, because once I have the information, then  
6 we can resolve both of those at the same time.

7 COMMISSIONER PARSONS: Oh, yes.

8 MS. KRESS: Let's get together and get the  
9 information, because if you still have major concerns, you  
10 might wish to discuss and maybe it will take longer. But why  
11 don't we tentatively put them both on, and then if it turns  
12 out you have more comments, then it just won't go on that  
13 evening.

14 COMMISSIONER HOOD: Okay.

15 CHAIRPERSON CLARENS: This was 96-12Z.

16 MS. KRESS: Yes, the map amendments that were  
17 done in 1997.

18 CHAIRPERSON CLARENS: Okay. The last final  
19 action is 90-3C, Conference Center Time Extension. That is a  
20 fairly clear case, and that has to do with the project that  
21 Mr. Mariani wants to pursue, this conference center near  
22 Catholic University. And it is being requested that -- to  
23 extend it for a year. Is that correct?

24 COMMISSIONER HOOD: Six months.

25 CHAIRPERSON CLARENS: Six months?

26 MS. KRESS: I think he requested -- I'm not

1       sure how long he requested. The order is for six months.

2                   CHAIRPERSON CLARENS: The order is for six

3       months, that's correct.

4                   COMMISSIONER HOOD: Mr. Chair, I make a motion

5       that we approve 90-3C unless there are any corrections that

6       need to be made. I didn't see any.

7                   COMMISSIONER PARSONS: Second.

8                   CHAIRPERSON CLARENS: Very good. The only

9       correction is the spelling of Mariani.

10                  MS. KRESS: Mr. Mariani's name.

11                  CHAIRPERSON CLARENS: Yes, and that should be

12       corrected.

13                  All in favor signify by saying aye.

14                  (Chorus of ayes.)

15                  Opposed?

16                  (No response.)

17                  The ayes have it; it is so ordered.

18                  MS. KRESS: And Commissioner Franklin did vote

19       for this time extension.

20                  Would you record the vote, please.

21                  MR. ERANDU: Okay, the staff records the vote

22       as four to zero to approve the Zoning Commission order number

23       -- to adopt Zoning Commission order number 689 -- Commissioner

24       Hood, Parsons, Clarens, and Franklin by proxy. Thank you.

25                  MS. KRESS: Thank you.

26                  CHAIRPERSON CLARENS: There's no item in

1 reference to the consent calendar; status report, Office of  
2 Planning Monthly Comprehensive Plan Status report?

3 Mr. Colby, we've received --

4 MR. COLBY: Yes, the changes in italics are  
5 very minor ones. It talked about the final action for today,  
6 which actually will be postponed on the citywide map  
7 amendments.

8 The other items in italics were that the  
9 proposed action was taken on the SP zones at the July  
10 Commission meeting, which is just recording for fact. And  
11 that on child development centers, that the Office of Planning  
12 submitted agency comments for this meeting. And that's --  
13 those are the only changes in the status report this month.

14 CHAIRPERSON CLARENS: Very good. The report is  
15 accepted.

16 Item 9, Litigation, there is none.

17 Item 10, Correspondence, we dealt with that.

18 We had a letter from Wilkes Artis requesting the time  
19 extension to the 1000 K Street, and we dealt with that.

20 Report from the Secretary who's not here, but  
21 maybe the Director can give us --

22 MS. KRESS: Yes. I would just say you have, in  
23 front of you I believe, were handed out the letters written  
24 regarding the Sua Sponte case. Alberto Bastida wrote all of  
25 the significant -- all of the parties and the BZA asking them  
26 to respond to the criteria so that that can come before this

1 body as a sua sponte and be reviewed.

2 CHAIRPERSON CLARENS: And the schedule for  
3 that, approximately, it's -- I think he said it was the end of  
4 October for responses and that it would be taken up in the  
5 November meeting. I believe that that's what he mentioned to  
6 me.

7 MS. KRESS: I believe that that is correct.

8 CHAIRPERSON CLARENS: Okay. Anything else?  
9 Item -- reminder schedule? The schedule for the Commission  
10 and for the BZA?

11 MS. KRESS: Yes, and we have just -- basically,  
12 all that we have right now is the 30th with these two  
13 additional items at a meeting prior to the hearing at 6:30  
14 that we've just discussed. Then the public meeting in  
15 October, the Thursday, November 4 meeting for the 99-321, and  
16 then just the public meetings for November and December.  
17 Other than the sua sponte, that's all that is on the calendar  
18 for this fall at this point.

19 CHAIRPERSON CLARENS: Very well, hearing no  
20 other business before the Commission, I declare this meeting  
21 closed.

22 (Whereupon, at 4:47 p.m., the proceedings went  
23 off the record.)

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